TRESPASS ON NATIONAL FORESTS OF FOREST SERVICE DISTRICT 1

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U. S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE, MISSOULA, MONT.
FRED MORRELL, DISTRICT FORESTER

TRESPASS ON NATIONAL FORESTS OF FOREST SERVICE DISTRICT 1

REVISED 1925

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DISTRICT FORESTER

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FOREWORD

The object of this handbook is to give the members of the Forest Service of district 1 a ready reference to the gist of the several criminal trespass laws, both Federal and State, applicable to national forest lands and to the personal property of the Government. Instead of giving in full the text of each trespass law, it was deemed advisable to digest such laws, since it was felt that access to the full text of any statute was not necessary for the proper handling of a criminal trespass case by the field force.

While the various trespass statutes have been condensed, it is believed that forest officers can acquire from the digest a comprehensive knowledge of the substance of the trespass laws which they are required to enforce. Possessing this knowledge, forest officers ought to be able to apply it intelligently to the facts of a criminal trespass case. The important things for forest officers to learn about law enforcement are the substance of criminal trespass statutes, the best methods of investigation, and how to identify material evidence of the offense committed.

The technical work of handling criminal trespass cases conformably to the rules of practice in justices' and probate courts is generally attended to by the local county or prosecuting attorney, after consultation with the forest employee making the complaint.

However, it frequently happens that a criminal trespass case is tried before a justice of the peace in an isolated locality that is inconvenient for the county attorney to get to. Under such circumstances the complaining forest officer or employee should have sufficient knowledge of criminal procedure to assist the justice in handling the case properly. Justices of the peace and probate judges usually rely on the prosecuting officer of the county to advise them in matters of this kind. Some of them, however, handle the criminal trespass cases brought before them without assistance from the county or the prosecuting attorney. Whenever, therefore, a justice of the peace or probate judge is willing to proceed with the trial of a person charged with an offense within the jurisdiction of the court, the local forest officer should present the evidence

of the guilt of the accused in its natural order, so that the justice's or probate court, as the case may be, may understand fully the facts relied upon to prove the guilt of the offender.

To enable forest officers to conduct the prosecution of an offender in the inferior courts referred to, an effort has been made in this digest to define the steps ordinarily to be taken in complying with the statutory requirements. These are very simple and with a little study can be comprehended easily by any forest employee. If the offense committed be a felony under the State law, the accused must be tried in the district or superior court of the country in which the crime was committed.

The codes of the various States contain more or less detailed outlines of the criminal procedure applicable in justices' and probate courts. Notes on the criminal practice of Montana and Idaho are here included for the guidance of forest officers. Generally speaking, such rules are framed for the protection of the accused. Hence it is that strict adherence to them by the prosecuting officer and the court is necessary. The prosecution is always required to prove the guilt of the accused beyond a reasonable doubt, and hearsay or opinion evidence, which is generally inadmissible, is not sufficient to establish a case under this rule.

The important part of law-enforcement work is investigation. In order properly to investigate a given case, the forest officer should have some idea of what constitutes evidence of the facts to be established. In this digest is given a brief summary of the nature and principles of evidence, followed by some useful hints on investigation. Experience has shown that some forest officers have unwittingly failed to appreciate the evidentiary nature of things and events connected with criminal trespass cases until opportunity for collecting definite information regarding them has vanished. It is realized, of course, that special talent is required for thorough investigative work and that not every forest officer can be a professional in this line. However, each one can improve his opportunity through a willingness to learn something of the methods commonly employed by experts.

It may require more time to put a case through a Federal court than through a State court. When the offense charged is against a Federal statute the first step in the proceeding, after the arrest of the offender, where arrest is considered necessary to prevent his

escape, is a preliminary hearing before a United States commissioner, who, upon a showing of probable cause, will commit the defendant to jail or admit him to bail, pending action of the grand jury; after this the case is usually referred to the proper United States attorney for presentation to a Federal grand jury. When prompt action is necessary the case may be taken up directly by the assistant to the solicitor with the United States attorney. Generally, if the accused is indicted, he is tried at the following term of the United States district court. Consequently in some instances the presence of Government witnesses may be required on three different occasions to comply with the Federal procedure requirements. If the crime is a misdemeanor (an offense not punishable by death or by imprisonment exceeding one year or at hard labor) the United States attorney may begin criminal action in the United States district court by what is known as an information without first obtaining an indictment. A preliminary hearing before a United States commissioner is not necessary in any case where the accused has been arrested after indictment by a Federal grand jury or after the filing of an information by the United States attorney.

The aid of the local justice or probate court may be invoked in criminal-trespass cases unless the act committed is a serious offense for which the State law does not afford an adequate penalty, or the act is not a violation of State law.

If the offender should be prosecuted in a Federal court a trespass report following in general Form 874–20 should be submitted to the district forester for reference to the assistant to the solicitor for consideration before any court proceedings are initiated, unless the immediate arrest of the offender is necessary to protect the interests of the United States, or the trespasser is likely to escape or remove from the jurisdiction.

Forest officers and employees are empowered by statute to make arrests without warrant for offenses against the national forest laws or regulations committed in their presence. With a warrant a forest officer or employee may make arrests for offenses against national forest laws and regulations committed in or out of his presence. As a general proposition, however, it is always safer to secure a warrant from a United States commissioner or from a justice of the peace or probate judge or other magistrate and use it as a visible sign of authority to make the arrest. Only

in rare cases is it necessary to make an arrest without a warrant. When an arrest is made under the stress of circumstances, a full report of the facts of the trespass and of the action taken should be submitted immediately to the district forester, so that the assistant to the solicitor may attend the preliminary hearing before the United States commissioner or the magistrate before whom the prisoner will be required to appear. If it be unusually difficult or impracticable in a criminal trespass case to assemble all the facts and have them in the hands of the district forester in time for proper consideration prior to the preliminary hearing, a partial report should be sent by ordinary mail or night-letter telegram.

Forest officers are not authorized to make arrests for offenses against Federal laws not applicable to national forests. United States marshals and their deputies are charged with that duty.

The right of national forest employees to make arrests with or without warrant for violation of State fire, game, and other trespass laws is defined by the statutes of each State within this district. Laws on these subjects are exceedingly dissimilar, and in order to be sure of the exact extent of their authority in this respect forest officers selected as deputy fire or game wardens should refer to the information applicable to the State in which they are located given under the heading "Criminal procedure." When an arrest is made by a forest employee acting in his capacity of State deputy game or fire warden, the offender should be taken before a justice or probate court having jurisdiction for immediate trial, and all facts and evidence should be submitted promptly to the prosecuting attorney of the county where the offense was committed. If the offense be one over which the justice or probate court has no jurisdiction to impose punishment, the offender will be committed to jail or bound over for trial in a higher court of the State. The prosecuting attorney should be given all the assistance possible in handling the case.

The fees of witnesses and other expenses incidental to a criminal-trespass trial in a State court are paid by the county in which the offense was committed. These expenditures do not include the costs of investigation, and, as a rule, they are limited to those incurred after the State court has acquired jurisdiction over the offender through the issuance of a warrant for his arrest or his voluntary appearance for trial. Some-

times the State law limits the number of witnesses to appear for the prosecution at the expense of the county, subject to the right of the presiding judge to increase the number should the administration of justice demand it. A similar rule is in force for preliminary hearings in criminal-trespass cases before the United States commissioners.

A forest employee will be reimbursed from forest funds for necessary expenses incurred in taking an offender arrested without warrant before the justice or other State court for formal accusation. After the filing of the formal criminal charges against the accused the court acquires jurisdiction, and all subsequent costs are legally chargeable to the county. Under special agreements the fish and game bureaus of Montana and Idaho have consented to reimburse forest employees for certain expenses necessary in making arrests without warrant for violations of the fish and game laws. (See circular letters on this subject. Examine also Circular Letter O–991 relative to the reimbursement of Government witnesses which can not legally be made by the county.)

In order that forest employees may become familiar with the form and substance of the simpler papers used in criminal practice before justices' and probate courts and before United States commissioners, such as affidavits, complaints, warrants of arrest, search warrants, subpœnas, commitments, etc., specimen copies are printed in this book.

This handbook is divided into five parts. Part I contains the substance of Federal criminal statutes and regulations concerning fire, game, property, timber, occupancy, grazing, and miscellaneous trespasses.

Part II covers the laws of Montana on all these subjects, except game, although the lines of classification of the different trespasses are not very clearly marked.

The trespass laws of Idaho are treated in Part III.

Part IV contains a substantial outline of criminal procedure applicable to hearings before United States commissioners, justices of the peace, and probate courts in Idaho, and before justices' courts in Montana. To this have been added hints on investigative methods and a short explanation of the nature of evidence.

A number of specimen criminal forms in use by United States commissioners and State magistrates constitute Part V.

An index completes the work.

It is realized that this manual will not supply full information to fit the divergent facts of every trespass case likely to develop in the field. It is felt, however, that it will be of material help to the field force in the prosecution of trespass cases if its contents are carefully studied and noted, notwithstanding its limited scope. If a forest employee is in doubt as to how to proceed in any instance and the manual does not contain the help he desires, he should ask the district forester for instructions.

PART I.—DIGEST OF FEDERAL TRESPASS LAWS

DIGEST OF FEDERAL FIRE TRESPASS LAWS

United States Criminal Code (35 Stat. 1088)

OFFENSE	PENALTY
SECTION 37. The conspiring of two or more persons to set on fire any timber or forested lands of the United States.	A fine of not more than $10,000, or imprisonment for not more than 2 years, or both.
SECTION 52. Willfully setting on fire or causing to be set on fire any timber, brush, or grass on the public domain, etc.	A fine of not more than $5,000, or imprisonment for not more than 2 years, or both.
SECTION 52. Leaving an unattended fire to burn near any timber or inflammable material on the public domain, etc.	The same.
SECTION 53. Building a fire in or near any forest, timber, or other inflammable material upon the public domain and leaving the same before it is totally extinguished.	A fine of not more than $1,000, or imprisonment for not more than 1 year, or both.

POLICY

For a statement of fire law enforcement policy refer to the sections of the National Forest Manual that deal with administration and protection, under the headnote "Fire law enforcement." See also Circular Letter O, Fire Trespass No. 1300. *Regulation T-1 of the Secretary of Agriculture made pursuant to act of June 4, 1897 (30 Stat. 35.)*

OFFENSE	PENALTY
A. Setting on fire, or causing to be set on fire, any timber, brush, or grass on national forest lands without authority from a forest officer.	A fine of not more than $500, or imprisonment for not more than 12 months, or both.
B. Building on national forest lands a camp fire in leaves, rotten wood, or other places where it is likely to spread, or against large or hollow logs or stumps where it is difficult to extinguish it completely.	The same.
C. Building on national forest lands a camp fire in a dangerous place or during windy weather without confining it to holes or cleared spaces from which all vegetable material has been removed.	A fine of not more than $500, or imprisonment for not more than 12 months, or both.
D. Leaving a camp fire without completely extinguishing it.	The same.

OFFENSE	PENALTY
E. Building a camp fire on those portions of a national forest withdrawn, without a permit, etc.	A fine of not more than $500, or imprisonment for not more than 12 months, or both.
F. Using steam engines or steam locomotives in timber-sale operations, etc., without approved spark arresters, unless oil is exclusively used for fuel.	The same.
G. Molesting, disturbing, interfering with by intimidation, threats, assaults, or otherwise any person engaged in the protection, preservation, etc., of the national forests.	The same.
H. Smoking during periods of fire danger publicly announced by the district forester upon such areas as may be designated by him, which may include roads and trails and improved camping grounds but shall not include improved places of habitation.	The same.
I. Going or being upon those portions of the national forests which may be designated by the district forester as areas of fire hazard, except with permit issued by the local forest officer, but no permit shall be required of any actual settler going to or from his home.	The same.
K. Using any automobile not provided with exhaust and muffler equipment in efficient condition on any road over lands of the United States within national forests or on any road acquired or maintained by the Secretary of Agriculture for the protection and administration of the national forests which shall have been posted by the Secretary of Agriculture as closed to such automobiles.	The same.
L. Carrying a firearm, except by authorized Federal or State officers, upon a portion of any national forest designated by the district forester in time of fire or other public emergency.	The same
M. The throwing or placing of a burning cigarette, cigar, match, pipe heel, firecracker, or any ignited substance, or the discharge of any kind of fireworks, in any place where it may start a fire.	The same

DIGEST OF FEDERAL GAME TRESPASS LAWS

Act of July 3, 1918 (40 Stat. 755)

OFFENSE	PENALTY
Hunting, capturing, killing, attempting to take, capture, or kill, possessing, offering for sale, selling, offering to purchase, purchasing, delivering for shipment, shipping, causing to be shipped, delivering for transportation, transporting, causing to be transported, or receiving for shipment or export any migratory bird, or any part, nest, or egg of any such bird, except as is authorized by the Secretary of Agriculture.	A fine of not more than $500, or imprisonment for not more than 6 months, or both.

United States Criminal Code (35 Stat. 1088)

OFFENSE	PENALTY
SECTION 242. The delivery by anyone to a common carrier for transportation or the acceptance by a common carrier for the purpose of transporting from one State to another of the dead bodies or parts of any wild animal or bird killed or shipped in violation of the laws of the State in which they are killed or from which they are to be shipped.	A fine not exceeding $200.
SECTION 243. The failure to mark plainly and clearly on the outside of packages containing dead bodies, plumage, or parts of game animals or wild birds shipped in interstate or foreign commerce the name and address of the shipper and the nature of the contents.	The same.
SECTION 84. The hunting, trapping, capturing, willfully disturbing, or killing of any kind of bird on any lands of the United States set apart by law, proclamation, or Executive order as a breeding ground, except under regulations made by the Secretary of Agriculture.	A fine of not more than $500, or imprisonment for not more than 6 months, or both.

Regulation T–7 of the Secretary of Agriculture

OFFENSE	PENALTY
Going or being upon national forest lands, or in or on the waters thereof, with intent to hunt, catch, trap, willfully disturb, or kill any kind of game or nongame animal, game or nongame bird, or fish, or to take the eggs of any such bird, in violation of the laws of the United States or any regulation made in pursuance thereof or of the laws of the State in which such lands or waters are situated.	A fine of not more than $500, or imprisonment for not more than 12 months, or both.

DIGEST OF FEDERAL PROPERTY TRESPASS LAWS

United States Criminal Code (35 Stat. 1088)

OFFENSE	PENALTY
SECTION 46. Robbing another of any kind or description of personal property belonging to the United States, or feloniously taking or carrying away the same.	A fine of not more than $5,000, or imprisonment for not more than 10 years, or both.
SECTION 47. Embezzling, stealing, or purloining any money, property, record, voucher, etc., of the United States.	A fine of not more than $5,000, or imprisonment for not more than 5 years, or both.
SECTION 48. Concealing, receiving or aiding in concealing, or retaining in possession any money, property, record, or voucher, etc., which had theretofore been embezzled, stolen, or purloined.	The same.
SECTION 56. Knowingly opening any gate or destroying the same or any fence, hedge, or wall inclosing lands of the United States which have been reserved or purchased pursuant to law, or driving stock, etc., on such lands.	A fine of not more than $500, or imprisonment for not more than 1 year, or both.
SECTION 57. Removing, defacing, destroying, or changing any section corner, witness tree, or meander post on any Government line of survey, or any monument or bench mark.	A fine of not more than $250, or imprisonment for not more than 6 months, or both.
SECTION 60. Willfully or maliciously injuring or destroying any telephone or telegraph line or part thereof, the property of the United States, or obstructing, delaying, or hindering the transmission of any communication over such lines.	A fine of not more than $1,000, or imprisonment for not more than 3 years, or both.

OFFENSE	PENALTY
SECTIONS 87, 89, 90, 91, 92, 96, 97. The converting to his own use by any person in possession of, or any disbursing officer of the United States, or a person acting as such, of money or property of the United States, or the loaning or depositing in any place of public money, except as is authorized by law.	A fine of not more than the amount embezzled, or imprisonment for not more than 10 years, or both.
SECTION 128. The concealing, removing, obliterating, stealing, or destroying of any map, record, book, proceeding, paper, or document on file in any public office or filed with any judicial or public officer of the United States.	A fine of not more than $2,000, or imprisonment for not more than 3 years, or both.

Act of June 8, 1906 (34 Stat. 225)

OFFENSE	PENALTY
Appropriating, excavating, injuring, or destroying any prehistoric ruin or monument upon lands owned or controlled by the United States without the permission of the secretary of the department having jurisdiction over the lands.	A fine of not more than $500, or imprisonment for not more than 90 days, or both.

Regulation T-3 of the Secretary of Agriculture

(Applies to lands of the United States within national forests)

OFFENSE	PENALTY
A. The willful tearing down or defacing of any notice of the Forest Service.	A fine of not more than $500, or imprisonment for not more than 12 months, or both.
B. The going or being upon such lands with intent to destroy, molest, disturb, or injure property used or acquired for use by the United States in the administration of the national forests.	The same.
C. Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of the national forests.	The same.
D. Mutilating, defacing, or destroying objects of natural beauty or of scenic value on such lands.	The same.
E. Damaging and leaving in a damaged condition roads or trails which are under the jurisdiction of the Forest Service.	

OFFENSE	PENALTY
F. Entering, occupying, or using without permission from a forest officer any building of the United States used by the Forest Service in connection with the administration of a national forest, except in case of emergency, to prevent suffering.	A fine of not more than $500, or imprisonment for not more than 12 month, or both.
G. Leaving any building of the United States used by the Forest Service in connection with the administration of a national forest without placing the same in a condition as sanitary as when entered.	The same.

DIGEST OF FEDERAL TIMBER TRESPASS LAWS

United States Criminal Code (35 Stat. 1088)

OFFENSE	PENALTY
SECTION 49. Cutting, wantonly destroying, or causing to be destroyed any timber growing on the public lands of the United States, or removing or exporting the same.	A fine of not more than $1,000, or imprisonment for not more than 1 year, or both.
SECTION 50. Cutting, injuring, or destroying wantonly any tree growing or standing upon lands of the United States reserved by law or regulations, etc.	A fine of not more than $500, or imprisonment for not more than 1 year, or both.
SECTION 51. Cutting, boxing, chipping, or chopping any tree on land of the United States for the purpose of collecting pitch or turpentine, etc.	The same.

Regulation T–5 of the Secretary of Agriculture

(Applies only to timber on national forest lands)

OFFENSE	PENALTY
A. The cutting, killing, destroying, girdling, chipping, chopping, boxing, injuring, or otherwise damaging, or the removal of any timber or young tree growth, except as is authorized by law or regulation of the Secretary of Agriculture.	A fine of not more than $500, or imprisonment for not more than 12 months, or both.
B. The damaging, under any contract of sale or permit, of any living tree before it is marked or otherwise designated for cutting by a forest officer.	The same.
C. The removal from the place designated for scaling, measuring, or counting of any timber cut under contract of sale or permit before it is scaled, measured, or counted, and stamped by a forest officer.	The same.

OFFENSE	PENALTY
D. The stamping, except by a forest officer, of any timber belonging to the United States, either with the regulation marking tools or with any instrument having a similar design: *Provided*, That timber lawfully cut from public land which is subsequently included within a national forest, may be removed within a reasonable time after the inclusion of such land in a forest: *Provided further*, That the term "timber" as used in this regulation shall be deemed and taken to mean trees of a character or sort that may be used in any kind of manufacture, or the construction of any article, or for fuel.	A fine of not more than $500, or imprisonment for not more than 12 months, or both.

NOTE.—Definitions of willful and innocent timber trespasses are published in the trespass section of the National Forest Manual. In the same manual will be found instructions as to seizure, damages, waste, injunction, settlement of cases, administrative remedies, legal or civil remedies, and the prevention of timber trespasses.

DIGEST OF FEDERAL OCCUPANCY TRESPASS LAWS

Act of February 25, 1885 (23 Stat. 321)

OFFENSE	PENALTY
The inclosure by any person, party, association, or corporation of any public land of the United States, or the maintaining of such inclosure, without color of title or lawful claim, or advising, counseling, or assisting in the inclosure of or maintenance of the inclosure of such lands.	A fine of not more than $1,000, or imprisonment for not exceeding 1 year, or both.

Regulations T–8 of the Secretary of Agriculture

(Applies to lands of the United States within national forests)

OFFENSE	PENALTY
A. Squatting or making settlement on lands of the United States within national forests, except in accordance with the act of June 11, 1906 (34 Stat. 233) (U. S. Comp. Stat. Sec. 5162).	A fine of not more than $500, or imprisonment for not more than 12 months, or both.
B. Constructing or maintaining any kind of works, structure, fence, or inclosure, conducting any kind of business enterprise, or carrying on any kind of work, without a permit, except as is otherwise allowed by law or regulation and except upon a claim for actual use, improvement, and development of the claim consistent with the purpose for which it was initiated.	The same.

OFFENSE	PENALTY
C. The placing by any person, association, or corporation, without written permission from a forest officer, of stock within an inclosure designated by the Forest Service as a pasture for tourists' stock, and allowing such stock to remain in the inclosure for more than 48 hours in succession, or more than twice during any calendar year.	A fine of not more than $500, or imprisonment for not more than 12 months, or both.
D. Having or leaving in an exposed or unsanitary condition on national forest lands camp refuse or débris of any description, or depositing on national forest lands or being or going thereon and depositing in the streams, lakes, or other waters within or bordering upon the national forests any substance or substances which pollute or are liable to cause the pollution of the said streams, lakes, or waters.	The same.
E. The discharge of firearms in the vicinity of camps, residence sites, recreation grounds and areas, and over lakes or other bodies of water, adjacent to or within such areas, whereby any person is exposed to injury as a result of such discharge.	The same.
F. Taking or allowing cattle, sheep, hogs, or other animals upon, or in any other manner using or otherwise going or being upon, any portion of a national forest which may be closed to use by the district forester because of danger from the spread of any communicable or infectious disease of cattle, sheep, hogs, or other animals, such as the foot-and-mouth disease or the scabies, except under permit issued by a forest officer, not in conflict with any State or Federal quarantine law or regulation, but no permit shall be required of any actual settler going to or from his home.	The same.

NOTE.—For a discussion of land policy, uses, sanitation, lawful land claims, ditches, reservoirs, rights of way, settlements, permits, camping grounds, railroads, easements, residence sites, roads, water rights, telephone, telegraph, and transmission lines, etc., refer to the lands section of the National Forest Manual.

DIGEST OF FEDERAL GRAZING TRESPASS LAWS AND REGULATIONS

Regulation T–6 of the Secretary of Agriculture

(Applies to lands of the United States within national forests)

OFFENSE	PENALTY
A. The grazing upon or driving across any national forest (land) of any livestock without permit, except such stock as are specifically exempted from permit by the regulations of the Secretary of Agriculture, or the grazing upon or driving across any national forest (land) of any livestock in violation of the terms of a permit.	A fine of not more than $500, or imprisonment for not more than 12 months, or both.
B. The grazing of stock upon national forest land within an area closed to the grazing of that class of stock.	The same.
C. The grazing of stock by a permittee upon an area withdrawn from use for grazing purposes to protect it from damage from the improper handling of stock, after the receipt of a notice from an authorized forest officer of such withdrawal and of the amendment of the grazing permit.	The same.
D. Allowing stock not exempt from permit to drift and graze on a national forest without permit.	The same.
E. The violation of any of the terms of a grazing or crossing permit.	The same.
F. The refusal to remove stock upon the receipt of instructions from an authorized forest officer when an injury is being done the national forest by reason of improper handling of the stock.	The same.

NOTE.—Regulations and instructions concerning civil remedies for grazing trespasses, injunctions, compromise of cases, restraint of trespassing stock, procedure, reports, measure of damages, etc., are published in the trespass section of the National Forest Manual and in special circular letters.

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Act of May 29, 1884 (23 Stat. 32)

OFFENSE	PENALTY
The receiving by any railroad company or the owners of any steam or sailing vessel for transportation or the transportation from any State to another of any livestock affected with any contagious, infectious, or communicable disease, or the delivery by any person to any railroad company or owner of a vessel for transportation of stock so infected; also the driving of infected cattle from one State to another.	A fine of not less than $100 nor more than $5,000, or imprisonment for not more than 1 year, or both.

Act of February 2, 1903 (32 Stat. 792)

OFFENSE	PENALTY
The violation of any of the terms of the stock sanitary regulations made by the Secretary of Agriculture to prevent the introduction or dissemination of contagious, infectious, or communicable animal diseases through the movement of stock from one State to another.	A fine of not less than $100 nor more than $1,000, or imprisonment for not more than 1 year, or both.

DIGEST OF MISCELLANEOUS FEDERAL TRESPASS LAWS

United States Criminal Code (35 Stat. 1088)

OFFENSE	PENALTY
SECTION 32. It is unlawful for any person falsely to assume or pretend to be an officer or employee of the United States with intent to defraud the United States or any person, or to demand or obtain in such pretended character any money, paper, document, or other valuable thing.	A fine of not more than $1,000, or imprisonment for not more than 3 years, or both.
SECTION 31. Administering oaths or taking or certifying acknowledgements relative to any bond, contract, proposal, undertaking, or other matter in which an oath is required by law or regulation, unless the person taking such oath be present.	A fine of not more than $2,000, or imprisonment for not more than 2 years, or both.
SECTION 37. The conspiring of two or more persons either to commit an offense against the United States or to defraud the United States in any manner or for any purpose. If one or more of such parties do any act to effect the object of the conspiracy, each of the persons involved is criminally liable.	A fine of not more than $10,000, or imprisonment for not more than 2 years, or both.

OFFENSE	PENALTY
SECTION 125. *Perjury.*—The testifying by any person who has taken the oath required by a Federal statute to testify and depose truthfully willfully contrary to such oath as to any material fact or subscribing falsely as to any such fact.	A fine of not more than $2,000, or imprisonment for not more than 5 years.
SECTION 40. Taking or carrying away without authority from the United States, from the place where it is filed or kept by authority of the United States, any certificate, affidavit, deposition, written statement of facts, receipt, voucher, record, paper, etc., with intent to use it to procure payment of money from the United States.	A fine of not more than $5,000, or imprisonment for not more than 10 years, or both.
SECTION 58. The use of threats or force to hinder, interrupt, or prevent the survey of public lands.	A fine of not more than $3,000, or imprisonment for not more than 3 years.
SECTION 35. The making or causing to be made, or presenting or causing to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, of any claim upon or against the Government of the United States or any department or officer thereof, when such claim is known to be false, fictitious, fraudulent; or for the purpose of obtaining or aiding in obtaining the payment or approval of such claim, making or using, or causing to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, when the same is known to contain a fraudulent or fictitious statement or entry, etc.	A fine of not more than $10,000, or imprisonment for not more than 10 years, or both.
SECTION 98. Contracting to pay for the construction, repairing, or furnishing of a public building more than the amount appropriated for such purpose.	A fine of not more than $2,000 or imprisonment for not more than 2 years.
SECTION 39. Promising, offering, or giving any money or other valuable thing to any officer of the United States, with intent to influence his decision or action on any question, matter, cause, or proceeding pending before him.	A fine equal to three times the value of the thing offered, promised, or given and imprisonment for not more than 3 years.
SECTION 85. The commission by any officer or employee of the United States, under color of his employment, of any act of extortion.	A fine of not more than $500, or imprisonment for not more than 1 year, or both.

OFFENSE	PENALTY
SECTION 136. The conspiring of one or more persons to deter by force, intimidation, or threat any person from testifying for the United States fully and truthfully in any court of the United States or before any United States commissioner.	A fine of not more than $5,000, or imprisonment for not more than 6 years, or both.
SECTIONS 118–122. The soliciting or receiving by any Federal officer or employee of any money from any other Federal officer or employee, or the degrading, discharging, or promotion of any Federal employee for failure to make any political contribution. It is also contrary to law for a Federal officer or for anyone to solicit funds for political purposes in a public building.	A fine of not more than $5,000, or imprisonment for not more than 3 years, or both.

Act of March 4, 1911 (36 Stat. 1355) (U. S. Comp. Stat., sec. 10270)

OFFENSE	PENALTY
The making by any officer, clerk, agent, or other person holding any office or employment under the Government of the United States and being charged with the duty of keeping accounts and records of any kind of any false or fictitious entry or record of any matter relating to or connected with his duties, with intent to deceive, mislead, injure, or defraud the United States or any person, or with like intent aiding or abetting any such officer, clerk, or agent, or other person in so doing * * *.	A fine of not more than $5,000, or imprisonment for not more than 10 years, or both.

PART II.—DIGEST OF MONTANA TRESPASS LAWS

DIGEST OF MONTANA FIRE, TRESPASS, AND BRUSH DISPOSAL LAWS

Montana Revised Code of 1921

OFFENSE	PENALTY
SECTION 11476. The willful and malicious burning by anyone of any bridge valued at more than $50 or any building, snowshed, vessel, grain stack, growing or standing grain, grass, tree, or fence, not his property.	Imprisonment in the State prison for not less than 1 year nor more than 10 years.
SECTION 1834. The failure of any paid fire warden (and sheriffs, deputy sheriffs, game wardens, and deputy game wardens are deemed paid fire wardens) to prosecute, etc., for violations of the law.	A fine of not less than $20 nor more than $1,000, or imprisonment in the county jail for not less than 10 days nor more than 12 months, or both, and forfeiture of office.
SECTION 1835. The failure of able-bodied citizens between the ages of 18 and 50 years, residing in the vicinity, upon the formal request of a fire warden, to assist in putting out fires, except for good and sufficient reason, it being provided that no citizen shall be called upon to fight a fire a total of more than five days in one year.	A fine of not less than $15 nor more than $50, or imprisonment in the county jail for not less than 1 nor more than 30 days, or both.
SECTION 1838. Destroying, defacing, removing, or disfiguring fire notices posted under provisions of the act.	A fine of not less than $15 nor more than $250, or imprisonment in the county jail for not less than 10 days nor more than 3 months, or both.
SECTION 1839. The failure of a county attorney or of any magistrate to prosecute, upon proper complaint filed with him, for a violation of the act, etc.	A fine of not less than $100 nor more than $1,000 and the declaring of the office vacant by the district court.
SECTION 2765. From June 1 to September 30, inclusive, the burning of any forest material without first obtaining a written permit from the State forester, a warden, or a ranger by anyone except a settler who is clearing his land for agricultural purposes, not including the broadcast burning of slashings, or who, if he is burning brush, has piled it and cleared a space 30 feet wide around the pile.	A fine of not less than $25 nor more than $500, or imprisonment in the county jail for not less than 10 days or more than 90 days, or both.
Setting out a fire contrary to the terms of the permit.	The same.
Setting out a fire more than 10 days after date of permit.	The same.

OFFENSE	PENALTY
Setting out a fire when the wind is blowing to such an extent as to cause danger of the fire's spreading beyond the control of the person setting it.	A fine of not less than $25 nor more than $500, or imprisonment in the county jail for not less than 10 days nor more than 60 days or both.
Setting out a fire without sufficient tools and help present at the time of setting it out and thereafter to control it.	The same.
Failure of the person setting out the fire to watch it until it is out.	The same.
SECTION 2766. The setting or leaving by any person on any land within the State of any fire which shall spread and damage or destroy property of any kind that is not his own.	A fine of not less than $10 nor more than $500.
The malicious setting by any person of a fire on his own or on another's land, with intent to destroy property not his own, etc. Such action constitutes a felony.	Imprisonment in the State penitentiary for not less than 1 year nor more than 50 years.
The kindling during the closed season by anyone of a camp fire on land not his own in or dangerously near any forest material, and the leaving of such fire unquenched.	A fine of not less than $10 nor more than $100 or imprisonment in the county jail for not more than 60 days.
Throwing away any lighted cigar, cigarette, or matches, or using firearms, or any other act which shall start a fire in forest material not one's own, and leaving the same unquenched.	The same.
SECTION 2768. The failure of any magistrate having jurisdiction to prosecute for the violation of the act.	A fine of not less than $100 nor more than $1,000 and dismissal from office.
SECTION 2769. The setting out or leaving by any person on his own or on another's land of a fire that shall spread and damage or destroy property of any kind not his own, etc.	Liability in a civil suit for all damages caused by the fire; also for all costs and expenses incurred by the State of Montana, or by any forestry association, or by any person in extinguishing or preventing the spread of such fire.
SECTION 2771. Failure on the part of any person, firm, or corporation (except an actual settler clearing his land for agricultural purposes, not including broadcast burning of slashings) to burn or otherwise dispose of brush slashing or other inflammable material resulting from timber cutting within 1 year from date of cutting.	A fine of not less than $25 nor more than $500, or imprisonment in the county jail for not less than 10 days nor more than 90 days or both.

OFFENSE	PENALTY
SECTION 2772. Failure to dispose of or burn within 2 years of date of this act, brush slashing and inflammable material resulting from cuttings made since October 1, 1918.	A fine of not less than $25 nor more than $500, or imprisonment in the county jail for not less than 10 days nor more than 90 days or both.
SECTION 2773. Burning such brush slashing or other inflammable material between June 1 and September 30, inclusive, without obtaining a permit in writing from the State forester or any of his subordinates.	The same.
Violation of the terms of the permit or the rules and regulations for burning.	The same.
Failure of an actual settler to obtain a permit for the broadcast burning of slashings during the closed season.	The same.
SECTION 11500. The careless setting fire to any timber, woodland, or grass except for useful and necessary purposes, or at any time the making of a camp fire or the lighting of a fire for any purposes whatever by any person without taking sufficient steps to keep the same from spreading from the immediate locality where it is used, or failure to extinguish such fire before leaving it.	Imprisonment in the county jail for not more than 1 year, or a fine of not more than $2,000, or both.
SECTION 11501. The careless or negligent setting on fire or causing to be set on fire of any woods, timber, prairie, or other combustible material by any person, whether on his own land or not, by means of which the property of another shall be endangered, or the negligent suffering of any fire upon his own lands or lands occupied by him to extend beyond such limits. Such negligence constitutes a misdemeanor.	A fine of not less than $100 nor more than $500, or imprisonment in the county jail for not less than 1 month nor more than 6 months, or both.
SECTION 11502. Wantonly or designedly setting fire to any timber, woodland, or grass or maliciously failing to extinguish the same before leaving it after making it for a necessary purpose.	A fine of not more than $5,000, or imprisonment in the State prison for not more than 5 years, or both.

MONTANA FISH AND GAME TRESPASS LAWS

NOTE.—Because of the frequent modification and amendment of the fish and game laws of Montana by the legislative assembly of the State, these laws have not been digested in this publication. For a complete list of such laws forest officers are referred to the game-law pamphlets issued periodically by the State fish and game warden.

DIGEST OF MONTANA PROPERTY TRESPASS LAWS

Montana Revised Code of 1921

OFFENSE	PENALTY
SECTION 11345. Maliciously burning in the nighttime an inhabited building in which there is at the time some human being.	Imprisonment in the State prison for not less than 5 years.
Maliciously burning, with intent to destroy, any building, house, edifice, structure, vessel, railroad car, tent, camp wagon, sheep wagon, or other erection capable of affording shelter.	Imprisonment in the State prison for not less than 1 year nor more than 10 years.
SECTION 11348. Entering in the nighttime, any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, with intent to commit grand or petit larceny or any felony. Such action constitutes burglary in the first degree.	Imprisonment in the State prison for not less than 1 year nor more than 15 years.
Entering in the daytime any structures defined in the preceding section, with intent to commit grand or petit larceny or a felony. Such action constitutes burglary in the second degree.	Imprisonment in the State prison for not more than 5 years.
SECTION 11352. Committing burglary with the use of nitroglycerin, dynamite, gunpowder, or other high explosive.	Imprisonment in the State prison for not less than 15 years nor more than 40 years.
SECTION 11482. The tearing down, breaking, or injuring of any fence or other inclosure for the purpose of entering on the land of another without the consent of the owner or the occupant.	A fine of not less than $10 nor more than $500, or imprisonment in the county jail not exceeding 6 months, or both.
SECTIONS 11373 and 11374. Taking any property with intent to defraud the true owner of his property or of the use and benefit of the same, or obtaining possession of the property, by the aid of any fraudulent or false representation, or making any check, order, or draft for the payment of money, upon any bank, if it is known at the time of such making or drawing, that sufficient funds are not available. Such action constitutes larceny. If the value of the thing taken or obtained exceeds in value the sum of $50, or if the property is taken from the person of another, the crime is grand larceny. If the value of the thing taken or obtained is less than $50, the crime is petit larceny.	For grand larceny, imprisonment in the State prison for not less than 1 year nor more than 14 years. For petit larceny, a fine of not more than $500, or imprisonment in the county jail for not more than 6 months, or both.

OFFENSE	PENALTY
SECTION 11476. The willful and malicious burning by any person of any bridge the value of which exceeds $50, or any stack of grain or hay, or any growing or standing grain, grass, tree, or fence, belonging to another.	Imprisonment in the State prison for not less than 1 year, nor more than 10 years.
SECTION 11481. Maliciously or willfully cutting down, destroying, or injuring any kind of wood or timber growing or standing on the land of another, or carrying away from such lands any timber or wood, or maliciously injuring or severing from such land any property.	A fine of not more than $500, or imprisonment in the county jail for not more than 6 months, or both.
Destroying, defacing, or injuring any door, window, or other portion of a vacant residence or other building or maliciously opening any closed door or window of such building without the consent of the owner, tenant, etc.	The same.
SECTION 11487. The willful and malicious cutting, breaking, injuring, or destroying of any dam, bridge, canal, flume, aqueduct, levee, embankment, reservoir, or other structures erected to create hydraulic power or for mining, manufacturing, agricultural, or municipal purposes.	A fine of not less than $100, or imprisonment in the county jail for not more than 2 years, or both.
SECTION 11488. The malicious cutting, sinking, breaking, injuring, or setting adrift of any boat or vessel the property of another.	A fine of not more than $500, or imprisonment in the county jail for not more than 6 months, or both.
SECTION 11489. Unlawfully obstructing the navigation of any navigable stream. Such action constitutes a misdemeanor.	The same.
SECTION 11491. Defacing, destroying, or tearing down any copy of or extract from any law of the United States or of the State of Montana, or any proclamation, advertisement, or notification set up at any place in the State of Montana by authority of any law of the United States or of Montana.	A fine of not more than $100, or imprisonment in the county jail for not more than 3 months, or both.
SECTION 11499. Willfully breaking, digging up, obstructing, or injuring any pipe or main conducting water or gas or any works erected for supplying buildings with water or gas. Such action constitutes a misdemeanor.	A fine of not more than $500, or imprisonment in the county jail for not more than 6 months, or both.

OFFENSE	PENALTY
SECTION 11512. Willfully administering poison to any animal, the property of another, or exposing poison with intent to have it taken by an animal, the property of another. Such action constitutes a felony.	Imprisonment in the State prison for not more than 3 years or in the county jail for not more than 1 year, or a fine of not more than $500, or both.
SECTION 11528. Willfully leaving open the gate leading in or out of any inclosed premises. Such action constitutes a misdemeanor.	A fine of not more than $25.
SECTION 11233. The maintaining of anything injurious to health or indecent or offensive to the senses, or anything that is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life and property by a community or neighborhood or by any considerable number of persons, etc., which constitutes a public nuisance.	A fine of not more than $500, or imprisonment in the county jail for not more than 6 months, or both.
SECTION 11235. Putting dead animals or the offal of a slaughter pen or butcher shop in any river, creek, pond, reservoir, or public highway, or on the borders of any stream, lake, etc., from which the water supply of a city or town is taken.	A fine of not more than $1,000, or imprisonment in the county jail for not more than 1 year, or both.
SECTION 11210. Defacing marks upon logs, lumber, or wood, or placing false marks thereon, with intent to prevent the owner from identifying or discovering his property.	A fine of not more than $500, or imprisonment in the county jail for not more than 6 months, or both.
SECTION 11194. Willfully poisoning food, medicine, or water, or drink, or any well or spring, or reservoir of water. Such action constitutes a felony.	Imprisonment in the State prison for not less than 1 year nor more than 10 years.
SECTION 11474. The malicious injuring or destruction, by any person, of any real or personal property not his own.	A fine of not more than $500, or imprisonment in the county jail for not more than 6 months, or both, in case of a misdemeanor, and in case of felony, confinement in the State penitentiary for a term of not less than 1 year and not more than 5 years.

DIGEST OF MONTANA GRAZING TRESPASS AND STOCK SANITATION LAWS

Montana Revised Code of 1921

OFFENSE	PENALTY
SECTION 3317. The removal from Montana of any horse, mule, mare, colt, or foal without inspection by a stock inspector or the sheriff of the county.	A fine of not more than $300 nor less than $50, or imprisonment in the county jail in default of payment of fine until such fine is discharged at the rate provided by law.
SECTION 3324. The removal by any person, association, or corporation of any stock or neat cattle from one county to another within the State of Montana, by railroad or otherwise, before they have been inspected by a stock inspector for brands.	A fine of not less than $50 nor more than $500, or imprisonment in the county jail for not more than 6 months, or both.

NOTE.—This act does not apply to stock driven by the owner from one county to another for the purpose of pasturing, feeding, changing range, etc.

The shipment by any railroad company of any stock or neat cattle for which it has not received a certificate of inspection.	The same.
SECTION 3288. Violation of the rules of the Montana Stock Sanitary Board.	A fine of not more than $500, or imprisonment in the county jail for not more than 6 months, or both.
SECTION 3269. The selling for human food of any part of an animal slaughtered under insanitary conditions.	The same.
SECTION 3287. An agent in charge of or an owner's allowing of a domestic animal to run at large on the public range or on a public highway while it is suffering from or after it has been exposed to any infectious, contagious, or communicable disease.	The same.
SECTION 11211. Maliciously marking or branding or altering any brand, with intent to steal any kind of stock or prevent its identification by the owner. Such action constitutes a felony.	A fine of not more than $500, or imprisonment in the State prison for not more than 5 years, or both.
SECTION 3306. Violation of the law of 1921 providing for the regulation and artificial marking or branding of livestock and the recording of marks and brands.	A fine of not more than $1,000, or imprisonment in the county jail for not more than 1 year, or both.
SECTION 11263. Knowingly selling or offering for sale any animal having glanders, farcy, or any contagious disease.	A fine of not more than $500, or imprisonment in the county jail for not more than 6 months, or both.

OFFENSE	PENALTY
SECTION 11543. Driving any horses, cattle, mules, or sheep through Montana which are brought from another State without being properly branded. Such action constitutes a misdemeanor.	A fine of not less than $50 nor more than $300.
SECTION 11549. Driving any cattle, horses, mules, or sheep from their customary range without the consent of the owner.	A fine of not more than $100, or imprisonment in the county jail for not more than 90 days, or both.
SECTIONS 3403–3405. The turning of any bull other than a purebred one of recognized beef type upon or allowing it to run at large on the public highways, the open range, or the national forest reserves by any person, firm, or corporation, or the turning upon or allowing any bull to run at large upon such public highways or open ranges or national forest reserves between January 1 and July 1 of each and every year, or in case such person, etc., permits female breeding cattle to run at large, permitting any purebred bull less than 15 months or more than 8 years of age to run at large.	A fine of not less than $25 nor more than $250.

NOTE.—"Open range" is defined as all lands not enclosed by a legal fence, and it includes highways used by the public whether or not the same have been formally dedicated to public use.

SECTION 3340. The taking by any person, into possession without the owner's consent, for his own use and benefit, of any astray.	A fine of not less than $25 nor more than $100, or imprisonment in the county jail for not exceeding 60 days, or both.

NOTE.—An "estray" is defined as any mare, gelding, stallion, colt, foal, mule, jack, jennet, cow, ox, steer, bull, stag, heifer, or calf, running at large away from its accustomed range, or any of the animals defined, the owner of which can not be found after diligent search

Chapter 63, Montana Laws of 1925

OFFENSE	PENALTY
The permitting by any owner or person having the management or control of any stallion, ridgeling, unaltered male mule, or jackass, over the age of 1 year, or the suffering of such animal to run at large on the open range. Any animal of the types specified running at large is a public nuisance.	Round-up and corralling of such animals at the expense of the owner. If the animal or animals can not be captured, taken up, or corralled after reasonable effort, it or they may be killed unless the owner within 10 days after notice to him removes and restricts the animals from running at large. (For the full text of the law, see the Session Laws of 1925.)

NOTE.—This chapter repeals sections 3396 to 3400, inclusive, of the Montana Revised Code of 1921.

Chapter 81, Montana Laws of 1925

OFFENSE	PENALTY
The receipt by any person within the State of Montana of any livestock, poultry, dogs, or other animals from points at which disease is epidemic outside the said State, after the governor of Montana by proclamation shall have prohibited the bringing in of such animals or poultry, or the receipt of any other articles or commodities designated in such proclamation.	A fine of not less than $300 nor more than $500, or imprisonment for not less than 60 days nor more than 8 months, or both.

Chapter 45, Montana Laws of 1925

OFFENSE	PENALTY
The permitting by the owner or person entitled to the possession of any horses, mules, cattle, sheep, or goats of their running at large within any herd district. Each day that any of the animals run at large constitutes a separate offense.	A fine of not less than $1 nor more than $5. If the animal found running at large in the herd district be a bull over 1 year of age, the penalty provided is a fine of not less than $10 nor more than $50.

Chapter 140, Montana Laws of 1925

OFFENSE	PENALTY
Abandoning horses to run at large on the public domain or open range. Abandoned horses are declared to be a public nuisance.	The destruction or disposal of such animals under the direction of the proper board of county commissioners if the reputed owner does not redeem them and there are no bidders for them at the round-up sale.

NOTE.—Forest officers interested in having a round-up made should proceed under the advice and instruction of the district forester. The law is complex and exacting in its terms, and great care must be taken to comply with its provisions.

An "abandoned horse" is defined in this statute as any horse, mare, gelding, filly, jack, mule, or other animal of the genus equus of the age of 1 year or over which is unbranded, or if branded which has escaped assessment for taxes for the year next preceding the date of its impoundment. Fillies running with dams are included.

Montana Revised Code of 1921

SECTIONS 3333–3339 of the Montana Revised Code of 1921 define the legal procedure for the disposal and sale of estray animals under the direction of the State livestock commission and the stock inspector. This procedure is complicated and must be strictly complied with. National forest employees should not take part in the round-up of estray animals without specific instructions from the district forester.

Sections 3378 and 3379 provide a civil remedy for impounding and disposing of trespassing livestock and for the recovery of the impounding expenses and damages for the trespass. Like other Montana livestock laws, these require strict adherence to the prescribed method of rounding up the trespassing stock. National forest employees should consult the district forester before taking into possession trespassing animals.

DIGEST OF MISCELLANEOUS MONTANA TRESPASS LAWS

Montana Revised Code of 1921

Grouped under this head is the substance of several Montana trespass laws applicable within as well as without national forests. They are dissimilar in many respects to other trespass laws; therefore it is deemed appropriate to set out a digest of them apart from the others.

OFFENSE	PENALTY
SECTION 1729. The failure of the person responsible to remove immediately upon the request of the proper road supervisor any fence, building, etc., encroaching on a public highway.	Forfeiture of $10 for each day that the encroachment remains unmoved after due notice.
SECTION 10894. The destruction by any person of any book, paper, instrument, writing, or other matter or thing which he knows is about to be required as evidence at any trial or investigation required by law or the concealing of the same. Such action constitutes a misdemeanor.	A fine of not more than $500, or imprisonment in the county jail for not more than 6 months, or both.
SECTION 10895. Preventing or dissuading a witness from appearing at a trial authorized by law.	The same.
SECTION 10916. The refusal of any peace officer to arrest a person properly charged with the commission of a crime.	A fine of not more than $5,000 or imprisonment in the county jail for not more than 5 years.
SECTION 10898. The conspiring of two or more persons to commit a crime of any kind. Such action constitutes criminal conspiracy.	A fine of not more than $1,000, or imprisonment in the county jail for not more than 1 year, or both.
SECTION 11464. Maliciously injuring public highway or obstructing the same.	A fine of not more than $1,000, or imprisonment in the State prison for not more than 5 years or in the county jail for not more than 1 year, or both.

NOTE.—A "highway" is defined by law as any highway, road, lane, street, alley, court, place, or bridge laid out or erected by the public or traveled or used by the public, or laid out or erected and dedicated by others to public use, or made a public highway upon petition.

SECTION 2649. Polluting in any manner any water which is used as a source of supply for any city, town, Federal, State, or county institution, or rendering it injurious to health or violating the rules of the State board of health.	A fine of not more than $1,000, or imprisonment for not more than 1 year, or both.
SECTION 11303. Carrying concealed weapons outside of the limits of any city or town.	A fine of not less than $25 nor more than $300, or imprisonment in the county jail for not less than 6 months nor more than 1 year, or both.

NOTE.—This law does not apply to peace officers, game wardens, forest officers, etc.

PART III.—DIGEST OF IDAHO TRESPASS LAWS

DIGEST OF IDAHO FIRE TRESPASS AND BRUSH DISPOSAL LAWS

Chapter 150, Idaho Laws of 1925

OFFENSE	PENALTY
SECTION 5. Failure on the part of anyone engaged in the cutting of timber, ties, logs, posts, poles, cordwood, pulp wood or other forest product or potential forest product to remove the fire hazard created thereby by piling and burning the slash in accordance with the directions of the State forester.	A fine of not less than $100 nor more than $1,000.
SECTION 6. Failure to pile and burn the slash which results from the cutting of timber and of other forest products on land adjoining the right of way of any railroad using coal or wood burning engines, or adjoining highways, county roads, main roads of travel, buildings, structures, lumber piles, donkey engines in operation, construction camps, logging camps, sawmill sites, rollways, or tourist camp grounds.	A fine of not less than $25 nor more than $500.
SECTION 8. Failure, in disposing of slash by fire, to exercise care to prevent the fire from spreading to other forest land, the creating of further fire hazard by damaging the timber growth left standing, failure to have on hand sufficient men, tools, supplies, and equipment to control the fire, or failure to comply with the terms of a permit to burn slash during the closed season.	A fine of not less than $100 nor more than $1,000.
SECTION 9. Failure or neglect on the part of any warden, or deputy warden, or any person lawfully commanded to assist in the enforcement of this act to do so.	A fine of not less than $10 nor more than $100, or imprisonment in the county jail not exceeding 30 days, or both.
The building of a camp fire in the closed season on forest land without clearing the ground immediately around it of material which will carry fire. Such action constitutes a misdemeanor.	The same.

OFFENSE	PENALTY
Leaving a camp fire unattended and burning on forest land during the closed season. Such action constitutes a misdemeanor.	A fine of not less than $10 or more than $100, or imprisonment in the county jail not exceeding 30 days, or both.
Permitting a camp fire to spread on forest land or building a camp fire against a stump, a log, a live or dead tree, or a standing snag during a closed season.	The same.
The carrying of a naked torch, firebrand, or exposed light or the use of other than incombustible wads for firearms in or near to forest land.	The same.
The kindling of fire during the closed season in or dangerously near to any forest material.	The same.
The failure to extinguish immediately any fire set in forest material during the closed season by the throwing of any lighted cigar, cigarette, burning tobacco, lighted match, by the use of firearms, by the setting off of firecrackers or fireworks, or by any other means.	The same.
SECTION 10. Willfully or maliciously setting fire to any woods, timber, brush, or any combustible material whatever, with intent to injure the property of another.	A fine of not more than $5,000, or imprisonment in the State prison for not more than 5 years, or both.
SECTION 11. Throwing on forest land during the closed season any lighted tobacco, cigar, cigarette, match, firecracker, fireworks, or other lighted material.	A fine of not less than $10 nor more than $100.
Failure on the part of anyone operating a public conveyance through forest land to post a copy of section 11 in a conspicuous place in a compartment of such conveyance.	The same.
SECTION 12. Failure on the part of anyone to pile and burn, as the work of clearing progresses, all refuse timber, brush, slash, or débris cut upon or resulting from the clearing of any right of way for any railroad, public highway, public trail, private highway, private road, logging road, trail, ditch, dike, pipe line, wire line, transmission utility, or transportation utility. Such action constitutes a misdemeanor.	A fine of not less than $100 nor more than $1,000.

OFFENSE	PENALTY
SECTION 13. From June 1 to September 30, inclusive (the closed season), setting or causing to be set without permit from the State forester or district fire warden, any fire in a slashing area, in any stump or in any stumps, in any log or logs, in any down or standing timber, on forest lands, dangerously near forest lands, in any field in any forest-protection district, when any dangerous wind is blowing, or when there are not at hand sufficient men, tools, supplies, and fire-fighting equipment to control the fire; or violating any of the terms of a permit to burn; or obtaining a permit by misrepresentation.	(Section 13 contains no penalty clause, but see other sections for penalties for acts mentioned in this section.)
SECTION 14. The failure of a common carrier railroad during the closed season to keep its right of way, station grounds, and operating property, contiguous to forest lands, clear and free of *all* combustible and inflammable material, or the leaving or depositing of fire or live coals or hot ashes in the immediate vicinity of forest lands.	A fine of not less than $25 nor more than $250 for each offense.

NOTE.—"Forest land" is defined by the act as any land which has upon it sufficient brush, inflammable forest growth of any kind or size, living or dead, standing or down, including debris or growth following a fire or the removal of forest products, to constitute in the judgment of the State forester a fire menace to life or property.

With the consent of the State cooperative board of forestry, the State forester may in proper cases suspend the restrictions of section 14.

SECTION 15. The failure during the closed season, of any common carrier railroad trainman who shall see any fire on the right of way, station grounds, or operating property of the railroad contiguous to or adjacent to forest land, in the course of his employment, to note the size, location, and direction of spread of such fire and to report it immediately to the conductor of the train. Failure to submit such a report constitutes a misdemeanor.	A fine of not less than $10 nor more than $50.
The failure of a common carrier railroad section man, gang man, or track walker to report immediately to his superior or foreman any fire seen by him on contiguous or adjacent forest land.	The same.

OFFENSE	PENALTY
Refusal or neglect on the part of the train conductor of a common carrier railroad to notify the telegraph operator at the next regular train-stop point of the facts in his possession as to the location, size, and direction of spread of a fire on forest lands.	A fine of not less than $10 nor more than $50.
Failure on the part of a telegraph operator to report the facts of a fire submitted to him by a train conductor to the fire warden of the proper protection district by telegraph or telephone.	The same.
Neglect on the part of any section foreman of a common carrier during the closed season to take reasonable and prudent measures to control and extinguish a fire on the railroad right of way or on station grounds or operating property of the railroad in his section, or his failure to report such fire to the nearest telegraph or telephone station.	The same.
Refusal or neglect on the part of a telephone or telegraph operator to telephone or telegraph the facts as to a fire received from a train conductor or from a section foreman to the fire warden of the proper protective district or to the deputy fire warden.	The same.
Failure on the part of a section foreman of a common carrier railroad during the closed season to report by telegraph or telephone to the warden or deputy warden of the proper fire district each fire observed by him on or near forest land.	The same.
SECTION 16. Failure on the part of the operator of any common carrier railroad within a protective district to keep his employees fully instructed as to their duties relative to reporting, controlling, and preventing forest fires.	A fine of not less than $25 nor more than $100.
SECTION 19. The burning of mill or plant refuse in the open by the operator of any sawmill, planing mill, shingle mill, or woodworking plant, or wood-manufacturing plant, operating in or near forest land unless a fireproof wall not less than 12 feet in height incloses the area on which the refuse, etc., is burned.	The same.

NOTE.—The State forester, with the consent of the State cooperative board of forestry, may suspend the restrictions of sections 19.

OFFENSE	PENALTY
SECTION 21. The use of or operation of any locomotive, logging engine, portable engine, traction engine, stationary engine, or boiler which is not provided with an adequate and efficient spark arrester and some device to prevent the escape of fire and live coals from ash pans and fire boxes on or near forest land by any person, employee, contractor, subcontractor, or pieceworker during the closed season.	A fine of $25 for each day that each engine is operated without spark arrester and device.

NOTE.—This section is not applicable to engines in which oil is used for fuel.

SECTION 22. Setting a fire in a forest-protection district without taking adequate precautions to prevent its spread.	The expense of the State forester's abating the nuisance plus 10 per cent of the total cost of abatement. If the debt is not paid promptly, it shall be collected by foreclosure of the lien which has attached to the offender's property.
SECTION 23. Injuring the property of any person, the United States, the State, or any county through negligence, willfulness, or malice, in handling any of the fires described in Sections 9, 10, and 11 of this chapter.	A sum equal to double the actual damages. (Recoverable through a civil suit.)

NOTE.—If the fire which caused the damage escaped accidently or unavoidably the injured person can recover the actual value of the damages only.

Under this section the United States, or the State, or the county, or an association, or a private individual may recover in an action for debt the cost of suppressing and patrolling fires started or neglected in violation of the provisions of this chapter.

SECTION 24. Willfully or maliciously doing away with, hiding, losing, injuring, or destroying the tools, equipment, or supplies of the forest protective agencies provided by chapter 150, or the tools, equipment, or supplies used under agreement with the State forester.	A fine of not less than $25, or imprisonment in the county jail for not less than 10 nor more than 30 days, or both.
SECTION 25. Maliciously or willfully destroying, defacing, disfiguring, or needlessly removing any sign, poster, warning, or notice posted under the provisions of chapter 150 or by any protective agency cooperating with the State.	A fine of not less than $15 nor more than $100, or imprisonment in the county jail for not less than 10 days nor more than 3 months, or both.

OFFENSE	PENALTY
SECTION 26. Failure, refusal, or neglect on the part of the prosecuting attorney of each county to prosecute with due diligence and energy offenders against the provisions of chapter 150 upon the submission of evidence to him showing with reasonable certainty a violation and the offender.	A fine of not less than $100 nor more than $1,000.

NOTE.—For the full text of chapter 150 see the pamphlet issued by the State forester. This chapter repeals sections 2941 to 2951, inclusive of the Idaho Compiled Statutes of 1919 and all other laws or parts of laws in conflict with it.

Idaho Compiled Statutes of 1919

OFFENSE	PENALTY
SECTION 8346. Willfully or carelessly setting on fire or causing to be set on fire any timberlands, and thereby destroying the timber.	A fine of not more than $300, or imprisonment in the county jail for not more than 6 months, or both.
Willfully setting on fire or causing to be set on fire prairie lands, and thereby destroying the grass or grain on such lands.	The same.
Building a camp fire in any woods or on any prairie and leaving the same without totally extinguishing it.	The same.
A railroad company's willfully and carelessly permitting fire to spread from its right of way to adjoining lands.	The same.

IDAHO FISH AND GAME TRESPASS LAWS

Because of biennial changes in the fish and game laws of Idaho, it has been deemed inadvisable to publish here a digest of them. For a full list of the offenses against these laws, see the pamphlet issued in 1925 by the Fish and Game Department of Idaho.

Questions of administrative policy and flagrant and nonflagrant acts are discussed in circular letters of the district forester and in the trespass section of the National Forest Manual.

National forest employees assigned to investigate fish and game law violations should be careful to distinguish an act which constitutes an offense under Idaho law from one which is a violation of a national forest regulation. In some cases the wrongful act is a violation of the Idaho law and at the same time an infringement of the regulation defined. However an act which is an offense against the law of Idaho is not necessarily a crime under the regulation. Nor is a violation of a national forest game regulation, as a rule, an offense under the law of the State.

DIGEST OF IDAHO PROPERTY TRESPASS LAWS

Idaho Compiled Statutes of 1919

OFFENSE	PENALTY
SECTIONS 8426-8427. Feloniously stealing, taking, carrying, leading, or driving away the personal property of another or converting lost property to one's own use without making reasonable search for the owner. Such action constitutes larceny.	See Sections 8432, 8438, and 8474.
SECTION 8429. Taking property the value of which exceeds $60 or taking property from the person of another or taking a horse, mare, gelding, cow, steer, bull, calf, mule, jack, goat, jenny, sheep, or hog. Such action constitutes grand larceny.	Imprisonment in the State prison for not less than 1 year nor more than 14 years.
SECTION 8432. Taking property the value of which does not exceed $60. Such action constitutes petit larceny.	A fine of not more then $300, or imprisonment for not more than 6 months, or both.
SECTION 8438. Preventing the owner of personal property from gaining possession of it, or buying or receiving any personal property known to have been stolen.	A fine of not more than $1,000, or imprisonment in the county jail for not more than 6 months or imprisonment in the State prison for not more than 5 years, or both.
SECTION 8474. Knowingly and designedly by false or fraudulent representation or pretenses defrauding any other person of money or property or obtaining credit by false representations or pretenses.	The penalty is the same as for larceny.
SECTION 8439. Bringing into the State property stolen in another State or received therein with the knowledge that it had been stolen.	The same.
SECTION 8441. Taking willfully and without authority, with intent to deprive the owner thereof, any saw logs, timber, lumber, railroad ties, poles, rails, posts, or cordwood which may have floated down a river or creek or are on any river, creek or adjoining land or removing or attempting to remove such logs, etc., or otherwise destroying or injuring them. Such action constitutes a misdemeanor.	A fine of not less than $25 nor mor than $300, or imprisonment fo not less than 30 days nor mor e than 6 months, or both.
SECTION 8442. Defacing marks, remarking, mutilating, or changing the marks on logs, lumber, or wood, with intent to prevent their identity from being discovered by their owner. Such action constitutes a misdemeanor.	A fine of not more than $500, or imprisonment not exceeding 6 months, or both.

OFFENSE	PENALTY
SECTION 8516. Maliciously placing any obstruction on the rail or track of any railroad.	Imprisonment in the county jail for not less than 6 months or in the State prison for not more than 5 years.
SECTION 8517. Maliciously digging up, removing, displacing, breaking, injuring, or destroying any public highway or any private way lawfully laid out or any bridge on any such way.	Imprisonment in the county jail for not more than 1 year or in the State prison for not more than 5 years.
SECTION 8520. Willfully or negligently depositing débris of any kind on any highway, easement, or street used by the public for travel, which is likely to injure any stock, or person, etc. Such action constitutes a misdemeanor.	A fine of not more than $25 or imprisonment for not more than 10 days.
SECTION 8521. Maliciously taking down, removing, obstructing, or injuring any telephone or telegraph line or any part thereof.	A fine of not less than $25 nor more than $300, or imprisonment for not less than 30 days nor more than 6 months, or both.
SECTION 8522. Obstructing, injuring, or damaging in any manner any public road, street, or highway.	The same.

NOTE.—A "highway" is a road, street, alley, or bridge laid out or erected by the public, or, if laid out by others, dedicated or abandoned to the public. (Sec. 1302.) A road not worked or used for a period of 5 years ceases to be a highway for any purpose. (Sec. 1305.)

SECTION 8527. Willfully burning, cutting down, or materially injuring any telephone, telegraph, or electric light pole or shooting at or injuring any insulator or wire, etc. Such action constitutes a misdemeanor.	A fine of not less than $25 nor more than $100.
SECTION 8539. The malicious injury or destruction by any person of any real or personal property not his own. Such action constitutes a misdemeanor.	A fine of not less than $25 nor more than $300, or imprisonment for not less than 30 days nor more than 6 months, or both.
SECTION 8541. Willfully administering any poison to any animal, the property of another, or exposing poison with intent that it shall be swallowed by such animal.	A fine of not more than $500 and imprisonment in the county jail for not more than 1 year or in the State prison for not more than 3 years.
SECTION 8556. Willfully and maliciously burning any bridge exceeding $50 in value, or any building, snowshed, or vessel not the subject of arson, or any stack of grain or hay, or standing or growing grain, or grass, or fence. Such action constitutes a felony.	Imprisonment in the State prison for not less than 1 year nor more than 10 years.

OFFENSE	PENALTY
SECTION 8559. Injuring or destroy any standing crop, grain, cultivated fruits, or vegetables, the property of another. Such action constitutes a misdemeanor.	A fine of not less than $25 nor more than $300, or imprisonment for not less than 30 days nor more than 6 months, or both.
SECTION 8563. Willfully and maliciously cutting, breaking, injuring, or destroying any dam, bridge, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim land, or to conduct water for mining, agricultural, manufacturing, or reclamation purposes, etc. Such action constitutes a felony.	A fine of not more than $1,000, or imprisonment for not more than 2 years, or both.
SECTION 8564. Willfully and maliciously burning, marking, branding, injuring, defacing, or destroying any piling, telegraph pole, telephone pole, electric transmission line pole, fence post, pile or raft of wood, plank, boards, or lumber, or cutting loose and sinking or setting adrift any raft or vessel. Such action constitutes a misdemeanor.	A fine of not more than $300, or imprisonment in the county jail for not more than 6 months, or both.
SECTION 8565. Intentionally tearing down, defacing, obliterating, or destroying any copy or extract of any State or Federal law, proclamation, notice, or advertisement, set in place by authority of the United States, or the State, or any court, before the expiration of the time set for it to remain in place. Such action constitutes a misdemeanor.	A fine of not less than $20 nor more than $100, or imprisonment for not more than 1 month.
SECTION 8566. Maliciously mutilating, destroying, tearing, defacing, or obliterating any written instrument, the property of another, the false making of which would be forgery. Such action constitutes a felony.	Imprisonment in the State prison for not less than 1 year nor more than 5 years.
SECTION 8573. Intentionally defacing, obliterating, destroying, or tearing down any posted notice of a mining claim, or ditch, or water right, or location, or taking down, destroying, or removing any poster, or monument erected to mark such property.	A fine of not less than $25 nor more than $300, or imprisonment for not less than 30 days nor more than 6 months, or both.

OFFENSE	PENALTY
SECTION 8579. Willfully, maliciously, or mischievously driving or causing to be driven any nail, spike, iron, steel, or metallic substance, or rock or stone, into any log or timber intended to be manufactured into boards, lath, shingles, or lumber, or marketed for such purpose. Such action constitutes a felony.	A fine of not more than $5,000, or imprisonment in the State prison for not more than 5 years or in the county jail for not less than 6 months.
SECTIONS 8580 and 8581. Advocating crime, sabotage, violence, terrorism, or unlawful methods as a means to accomplish industrial or political reform. Such action constitutes a felony.	A fine of not more than $5,000, or imprisonment in the State prison for not more than 10 years, or both.

NOTE.—This crime may be committed by word of mouth, or by writing, printing, publishing, circulating, selling, distributing, or displaying any book, paper, or document advocating the commission of the above crimes, or by justifying the attempt or action of another in the advocacy of such acts, or by organizing or helping to organize societies for such purposes, or by being present at a meeting of such society, or by membership in such society.

SECTION 8583. The owner of a building permitting such building to be used for syndicalist meetings, after he has been notified that it is being so used. Such action constitutes a misdemeanor.	A fine of not more than $500, or imprisonment in the county jail for not more than 1 year, or both.
SECTION 8389. Willfully cutting, destroying, or injuring without authority any timber or wood growing or standing on lands of the State of Idaho. Such action constitutes a misdemeanor.	A fine of not less than $25 nor more than $300, or imprisonment for not less than 30 days nor more than 6 months, or both.
SECTION 8390. Willfully cutting without authority timber or wood on State lands for the purpose of shipping it out of the State or shipping out of the State timber or wood cut upon State lands. Such action constitutes a felony.	A fine of not more than $5,000, or imprisonment in the State prison for not more than 5 years, or both.
SECTION 8400. Entering any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, or railroad car, with intent to commit grand or petit larceny or a felony. Such action constitutes burglary.	For burglary committed in the *nighttime*, imprisonment in the State prison for not less than 1 year nor more than 15 years. If committed in the *daytime*, imprisonment in the State prison for not more than 5 years.

DIGEST OF IDAHO GRAZING TRESPASS AND STOCK SANITATION LAWS

Idaho compiled statutes of 1919

OFFENSE	PENALTY
SECTION 1853. The bringing into the State by any person, firm or corporation, or the causing to be brought in, of any animal affected or infected with any contagious, infectious, or communicable disease.	A fine of not less than $100 nor more than $5,000.
SECTIONS 1847 and 1876. Violating any of the regulations of the United States Secretary of Agriculture restraining the importation of diseased cattle and suppressing contagious diseases among domestic cattle after such rules have been accepted by the Governor of the State. Such action constitutes a crime.	The same.
SECTION 1860. Violating any of the quarantine regulations for the prevention or suppression of scabies or contagious, infectious, or communicable diseases in sheep. Such action constitutes a crime.	The same.
SECTION 1985 (as amended in 1921). Failure on the part of any user of the public range during the breeding season to place upon such range a registered bull of beef breed not less than 15 months nor more than 8 years of age for every 25 head or fraction thereof of female breeding cattle pastured by him on such range. No bull shall be run on the same range for more than three successive breeding seasons. A violation of this law is a misdemeanor.	A fine of not less than $25 nor more than $100.

NOTE.—This law does not apply to the owner of female dairy cattle taken up each night to be milked, provided such owner has for breeding such cattle a registered bull for every 50 head. The laws of the State of Idaho relative to estrays, unbranded stock, and trespassing animals do not provide adequate remedies for unlawful use by such animals of lands of the United States. Procedure against the owners of stock for damage to national forest lands should be initiated under the regulations of the Secretary of Agriculture.

DIGEST OF MISCELLANEOUS IDAHO TRESPASS LAWS

Idaho compiled statutes of 1919

OFFENSE	PENALTY
SECTION 8204. The conspiring by two or more persons to commit any crime. Such action constitutes criminal conspiracy.	A fine of not more than $1,000, or imprisonment for not more than 1 year, or both.
SECTION 8339. The maintaining or committing of a public niusance. Such action constitutes a misdemeanor.	A fine of not less than $25 nor more than $300, or imprisonment for not less than 30 days nor more than 6 months, or both.

NOTE.—A public niusance is anything which is indecent or injurious to health, or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of it by an entire community or neighborhood, or unlawfully obstructs the free passage of any navigable lake, river, stream, street, highway, etc.

PART IV.—COMPENDIUM OF INFORMATION IN REGARD TO EVIDENCE, INVESTIGATION OF TRESPASSES, AND COURT PROCEDURE

Evidence. Investigation of Trespasses. Criminal Procedure before United States Commissioners. Criminal Procedure in Justices' Courts of Montana. Procedure in Justices' and Probate Courts of Idaho

EVIDENCE

In legal parlance the word "evidence" includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved.

Proof should not be confused with evidence. Proof is the effect of the evidence or what results from the evidence. Evidence is the medium by which truth is established. Matters of fact are proved by moral evidence alone. Proof beyond a reasonable doubt does not mean proof beyond all doubt, as the layman sometimes thinks it does. When we consider the limitations of the human mind and the chance for error in observation and calculation, it would be unreasonable to expect a showing of proof beyond all doubt. Satisfactory evidence is that which, after it has been tested by the customary legal rules of examination, leaves on the mind of the average person the impression that the alleged fact under investigation is proved or disproved. Evidence must be competent and admissible, satisfactory and convincing. It must be sufficient. In civil cases it must preponderate in favor of one party or the other to the controversy to entitle either one to a verdict; in criminal cases it must be beyond a reasonable doubt. The competency and the admissibility are entirely distinct from the sufficiency and the effect of the evidence. The former is exclusively the province of the court to decide, and the latter is for the jury to analyze and evaluate as they are guided by their experience in the common affairs of life.

Cumulative evidence is that of the same kind bearing directly on the same point. To illustrate: Smith made a certain oral statement to Fisher relative to his presence at a particular place at a specified time. On another occasion, Smith made a similar statement concerning the same point to Russell. The testimony of Fisher and Russell on this point would be cumulative.

Circumstantial evidence is of two kinds—certain, or that from which a reasonable conclusion follows; uncertain, or that from which a conclusion does not necessarily or immediately follow but which renders the thing probable. Additional evidence of other circumstances connected with the point under investigation would be necessary before the truth would be disclosed or proper deductions could be made with a sufficient degree of certainty.

There are mistaken notions as to circumstantial evidence, especially as to its reliability and directness. There are persons who feel that direct proof of every alleged fact ought to be and must be presented to a court and jury to warrant a conclusion as to what the facts are. This conception is erroneous, because circumstantial evidence, when properly tied together, is just as good as direct evidence. In fact, circumstantial evidence is direct evidence, and very often under a strong chain of it there is less chance to do injustice than under what is popularly known as direct evidence. The rule in criminal cases is that evidence of the circumstances relied upon to prove the guilt of the accused must be such as to produce a moral certainty in the mind of the jurors of the guilt of the prisoner and to exclude every other reasonable assumption or conclusion.

In the nature of human activity there is always evidence of a thing's being done or accomplished or of one's failure to do what one's duty to

society requires. Often it is erroneously said that there is no evidence of a fact, or no evidence to connect the perpetrator with the crime. There is always evidence of the fact to be proved or evidence to connect the perpetrator with the crime. The difficulty is in revealing the evidence to prove the crime and the guilt of the accused. Evidence of a fact always exists; therefore it is not proper to say there is no evidence.

Another common error is the assumption that because of family ties, or local animosity against existing governmental regulations, or a desire not to be a witness in a case, or because of the prospect of being adversely criticized by local inhabitants, should a prospective witness discuss the circumstances of a crime he would naturally misrepresent the facts within his knowledge. Men naturally speak the truth. They are naturally inclined to truthfulness. The truth is always spoken unless selfish or other considerations influence the mind not to exercise its natural tendency. Even the greatest liar speaks the truth much more often than he falsifies in the course of everyday events. Therefore the statement of a person in regard to any matter under investigation should not be rejected or considered unimportant because the investigator has learned that the person interrogated has had or has the reputation of being untruthful at times.

Furthermore, even though some untruth might be found in the statement of a person having personal knowledge of a fact, still, on account of the natural tendency of his mind, there might be truth mingled with untruth in his version of the affair. And the investigator, from the limited truth presented, might be able to use the valuable part of the statement as a leader or guide to other sources of truth which if disclosed would be sufficient when correlated with what had already been ascertained to prove the matter under investigation.

For this reason an investigator who understands his business will never reject an item having either a direct or an indirect bearing on the subject matter. Moreover, in nearly every statement made by the ordinary man in which are described the occurrences connected with and surrounding the point to be proved, there are immaterial allegations. It is the duty of the investigator to select and utilize the material part and to disregard the immaterial. A keen mind can nearly always separate the valueless stuff from that which has a tendency to prove the point under investigation.

As men in general do not violate the penal code, the law presumes every man to be innocent. But some men do transgress the law; therefore reliable and sufficient evidence is required to rebut this presumption. This legal presumption of innocence is to be regarded by the jury as evidence favorable to the accused; and, if the guilt of the accused is to be shown by circumstantial evidence, the proof ought to be not only consistent with the prisoner's guilt but inconsistent with any other rational conclusion. While there is a presumption of innocence, evidence of certain circumstances may raise also a presumption of guilt which might outweigh the presumption of innocence.

For instance, the possession by the accused of the missing property of another would warrant a presumption that he stole it unless the possession is explained by him. Also, in a case of arson, finding in the possession of the accused property which was known to be in the burned building a short time prior to its destruction would warrant a presumption that the accused was in some way connected with the crime. The presumption of guilt may also be proper if a person destroys or suppresses something which would evidence the truth of the matter under investigation. This is on the ground that proof of the truth would operate against the accused. These presumptions are, however, for the jury to weigh and pass on. They are not conclusive presumptions upon which the court could render judgment in a criminal case.

Every person accused of crime ought to have his case tried according to established rules of procedure in order that he may not be convicted through inadmissible and incompetent evidence which might be given undue weight by a jury to the injury of the accused, or which might be misinterpreted through prejudice or wantonness or ignorance or mistake

Hence certain rules of law are prescribed in order to regulate the introduction of evidence and to safeguard the legal rights of the accused. The presentation of evidence to a jury is, therefore, governed by four general principles:

1 The evidence must correspond with the allegation and be confined to the point in issue.

2. The evidence is sufficient if the substance only of the issue be proved.

3. The burden of proving a proposition, charge, or issue lies on the party holding the affirmative.

4. The best evidence of which the case, in its nature, is susceptible must always be produced.

It is not necessary, however, that the evidence bear directly upon the issue or charge. It is admissible if it tends to prove the issue or is a link in the chain of proof. Also acts and declarations of the accused made at a former time are admissible to prove the intent of the same person at the time of the commission of the crime. Acts and declarations of the accused, after the time of the commission of the crime, are competent if they tend to establish his guilt. It should always be remembered that in every criminal case the burden of proof is on the Government to convince the jury of the guilt of the accused, according to the manner and form of the complaint or indictment. In a criminal case proof of the doing of an act by a specific person is not sufficient for conviction. It must be shown, in addition, that the act is unjustifiable and unlawful.

That the best evidence of which the case is susceptible must be produced is a well-established rule of judicial procedure. This does not mean the greatest amount of evidence. The design of the rule is to prevent the introduction of secondary evidence while the original is in existence and while it is within the power of the party to produce it. It is well to remember, too, that this rule does not comprehend the strength or weakness of evidence. The scope and intent of the rule is to prohibit substitution while the original is available. For instance, the production of the original written document is the best evidence of its contents. A copy of it or a statement of its substance by a person who read it would be secondary evidence. There are, however, some exceptions to this rule. On account of the inconvenience incidental to the removal of public records from their permanent depository, certified copies of these records are accepted in courts of justice instead of the originals.

All forest officers should realize that hearsay evidence is never accepted by courts of justice as proof of any fact. Sometimes officers and laymen find it hard to distinguish between hearsay evidence and other evidence. We are so prone in the everyday affairs of life to accept as true what others say regarding any occurrence not subject to our own observation, or tested by our senses, that we unconsciously pass it on to our neighbors as truth. Courts of justice, however, do not allow a person to testify as to any matter unless he has acquired his knowledge by personal observation of the transaction, occurrence, or thing, or acquired his knowledge through the exercise of his other senses upon the subject matter covered by his testimony. If John Smith tells you he saw Howe commit a specific crime, you can not testify as to what Smith told you about Howe. Smith must appear to testify as to this fact. Of course, if Howe himself admitted to you that he did the act or the wrong, you could testify as to the conversation, since this would not be hearsay.

There are some variations of this rule, but the above explanation covers the general practice. The practice of admitting evidence of general reputation or of good character in a community might be mentioned as an exception to the rule relative to hearsay evidence. Another exception is the statement or admission of one of the parties to an illegal conspiracy. After the conspiracy has been entered into, the statement of one of the members of it is binding on the others, even though they were not present when the statement was made. A confession of guilt is also good evidence, provided it is made voluntarily. If it be made under intimidation or under the flattery of hope, it is not

admissible. All of the conversation in which the admission of guilt was made must be recited and left for the jury to judge and weigh.

The means of proof or the instruments of evidence are divided into two general classes, viz, unwritten and written, or in other words, oral testimony and documentary evidence—maps, charts, weapons used in the commission of crime, articles of clothing and adornment, personal property of various kinds, models, specimen exhibits, etc.

INVESTIGATION OF TRESPASSES

Qualifications of an investigator.

The greater a man's ability the more he can accomplish in this as in any other work. Qualifications peculiarly necessary for an investigator are observation, common sense, and ability to work. Nothing is so small that it can safely be overlooked; a whole case may turn on what seems a most unimportant detail. On the other hand many details are unimportant. The correct judging of what is important depends largely upon the imaginative power to picture constantly in the mind the whole case and its probable development. Beware of letting anything go as unimportant without thus carefully weighing it.

Catching a criminal is a battle of wits; the side which thinks hardest all the time wins. Success in difficult cases requires special aptitude, and only with hard, intelligent thinking will an officer be successful.

Preliminary information.

Success demands thorough preparation. This includes not only a knowledge of the laws and procedure under which we work, but an intimate knowledge of the region of the crime, such as topograph, trails, and other get-away avenues; of the persons existing in every community who know all about the rest of the community; of the habits, rendezvous, and associates of general community suspects, and of their family, business, and other relationships, so that in seeking information from others you may not unwittingly kill your own game by approaching one of the suspect's close sympathizers.

Starting out.

Investigative work, especially in fire cases, demands even greater speed in get-away than in suppression. If footprints lie for days, or even until after the suppression crew has tramped over the ground, before they are investigated, not only may they be obliterated by others, but the defense will not be slow to take advantage in a court trial of the possibility that tracks proved to be those of the defendant could have been made after the offense was committed. The latter danger applies to other trespasses as well as to fire. Our only safety lies in starting investigation on the ground with all possible speed.

Number of investigators.

Never rush in a mob. Unless something is wrong with the protection organization, even fire suppression should not require sending many men at first For investigative purposes two officers are desirable. By this system an additional witness is provided to support the charges in the event of the trial of the offender.

Procedure.

The first man or men at a fire must look for clues and preserve any found. The man in charge of the fire crew should, of course, be the leader in the search for clues in the vicinity of the fire or the point where any offense has been committed. If the tracks of men or animals or means of conveyance are found, an effort should be made to prevent their obliteration or injury to their distinctive features until a qualified officer shall have opportunity to examine them and make casts of them, if necessary. The men and animals engaged in suppressing the fire should be required to keep outside of the area containing the imprints, if this is at all practicable

Require men in charge of fire fighting to keep eyes open for clues and to note people met on trails, with time of meeting, especially outsiders first on the scene of a fire, who may be the setters, with an irresistible desire to see it burn; to keep ears open for boastful or antagonistic remarks of fire fighters, who may themselves have set the fire or know of those who did; and to report anything learned at once to the ranger or other forest officer in the vicinity.

Searching for clues.

What are clues? No deed is done without a clue's being left; the only question is our ability to find it. A no-clue case means only that we are not up to scratch.

Anything is a clue which has any connection with the offense or its author. Tracks, camp-fire or lunch remains, "plant" used to set off a fire, blanket or other threads pulled off by brush or trees, hairs, scraps of paper, or other things carelessly or unintentionally left by the offender, etc., are examples. A good working rule is that everything is to be held as a clue which can not be accounted for without reference to the offense.

But nothing is really a clue without the interpretation which can connect it with the deed. Some things, such as tracks, the forest officer can interpret better than any outside expert; in other words, we are ourselves the best experts. Other things can be interpreted only by those with special training—for example, by the microscopist, the chemist, or some other specialist.

The working theory.

To guide the investigator in the interpretation of clues of evidence, two things are necessary: (1) Every bit of knowledge he can gather before leaving for the scene or on the way, as to the offense, including its occurrence, surrounding circumstances, probable author, and motive; and (2) the building of a mental picture or reconstruction of all that is known of the case. Constant revision of the theory and coordination of clues are necessary. Nothing else will prevent wandering, loss of time, and possible failure. At the start one may have only a "hunch" as to who set the fire or where to look for clues, but every new thing found should be considered carefully. The theory first set up may afterwards prove to be erroneous, but it has very frequently happened that the theory, though a false one, has been the bridge which led to the truth.

How to search.

Upon arriving on the scene, first locate the critical point—for example, the origin of a fire. If the point of origin is not evident, beware of jumping to conclusions; the incendiary or other criminal does not do the obvious thing if he has any sense. Examine minutely the immediate area. Definite system is absolutely necessary in this search. Go systematically around the circle, widening the circles each time, but keep them close enough together.

Notebook record.

Record must be kept of everything found and done and of all material conversations held or information gathered. Describe in the proper notebook everything that is found, so that the notes may be used later to refresh your memory should you be called to testify relative to those things. The time of every occurrence or find should be recorded. Also be sure to ascertain the exact time the fire was started, or discovered, when fighting commenced, and all other significant circumstances.

The time of making material entries in the notebook should be entered in the notebook and such time records should be based on actual examination of a well-regulated watch. Important information should be entered in the notebook immediately after it is obtained. Testimony based on a notation made immediately after an occurrence is much more convincing to a court and jury than that based on an entry made at the end of the activities of the day or later.

Maps and photographs.

Accurate maps and photographs are the best means of showing in court many of the facts of a trespass and are nearly always necessary. It is unusually difficult to present the facts of intricate cases to the court and jury in an understandable way without the aid of these guides. Maps should be as accurate as possible and should represent the area in diagrammatic outline with as little printed or written data as possible. Symbols should be used to identify material points and to aid the maker of the map in explaining to the jury the relation of topography, culture, etc., to the trespass area. Printed matter indicating the guilt of the accused should not be put on the map, since it would prohibit its use as an exhibit at the trial. In taking pictures a proper note should be made of the film used and of the time, place, and circumstances under which the object was photographed. Photographic record No. 166 should be used for preserving the data. In civil cases the same strictness relative to printed or written matter on maps is not enforced. Remember that photographs involving scenery are more desirable if taken from the level of the eyes. The photographic record should show the point where the camera was set, the direction from which the picture was taken, angle of view included, etc.

Objects.

The finder must put on each object found a private mark, in a hidden or inconspicuous place, by which he can himself identify it in court as the identical object found. This, together with the notebook record of the circumstances of finding, arranged in their chronological order in a bound notebook, is the best safeguard against an intimation by a defense attorney, possibly to the serious prejudicing of a jury, that evidence has been "planted" by the prosecution.

All objects which may be needed as evidence should be guarded with the utmost care to avoid the possibility of loss, misplacement, or theft. The forest officer should take personal charge of all such articles, unless it be desirable to turn them over to the custody of the district forester or county attorney. If the forest officer turns them over to the county attorney he must, of course, take a receipt and enter it in his notebook record, so that they will not be overlooked in working up his material for the case.

Plan of campaign or working theory.

You start with a few facts and a tentative theory based upon them and your best surmises. Whenever new clues or facts are found, ask yourself: (*a*) What instructions, if any, are there in respect to a situation like this? (*b*) What does this act mean? (*c*) On the basis of facts to date, if I were the criminal, what would I do next? Sit down and smoke a pipe over it, if that will help. There is no time to be wasted; but right interpretation of facts and right action respecting them are so essential that the time necessary to insure these will yield bigger dividends than half-baked hasty action.

The simplest working theory which will explain the facts is always that to be preferred; but the theory is never complete until the case is closed. At all times, but especially at first, when the theory is based on few facts, it must be lightly held, subject to modification at any time by what shall be discovered next, regardless of whether the new evidence agrees with the previous theory or not.

Such open-mindedness, the viewing of every new fact on its own merits, is harder to maintain than many people suppose and requires constant and definite effort. It is extraordinarily easy to overvalue new facts which coincide with a theory already built and to undervalue those which do not. Nothing is more common among inexperienced officers or more fatal to success than holding such a preconceived theory. Usually its holder will not change the theory even when evidence contrary to it appears, but will instead discredit the evidence regardless of its weight. Therefore it is necessary systematically to review one's theory frequently in the light of all the facts to date.

In building a sound theory there are four steps:

(*a*) Get a clear definition of the problem. This may not be what first appears; be sure you know what the difficulty is.

(*b*) Cast about for possible solutions—not only the first one which occurs to you but as many as you can figure out; then compare their merits and select the most probable one.

(*c*) Reason out the developments of this idea to its conclusion; by pushing it to a final conclusion you will probably be able to determine whether or not your idea or theory of the problem is warranted.

(*d*) Constantly test your theory by searching for further evidence or by experiment. Keep your eyes open for and give honest weight to evidence indicating that some other theory is more probable.

To be complete, the theory about the case must answer the following questions: (*a*) What was the offense? (*b*) Where was it committed? (*c*) When was it done? (*d*) How was it accomplished? (*e*) Who did it? (*f*) Why did he do it?

Memorize these six words, *what*, *where*, *when*, *how*, *who*, *why*, and frequently test by them the completeness of both your theory and the facts so far actually established. This will be one of the greatest helps in planning what remains to be done.

Whenever a fact is found which points to a material conclusion, ask yourself: (*a*) Does this sufficiently prove the conclusion? (*b*) What else, if anything, will be necessary to establish or corroborate it in court?

A jury will only be convinced by a complete chain of circumstantial evidence, both as to facts and the proof that they are facts. Constantly review this chain while following clues to be sure no link is omitted. Also bear in mind that any one chain may be broken somewhere by the defense; therefore build all the lines of evidence possible to your conclusion.

Tracks are among our most important clues. If a fire was set, or other offense committed by human agency, a man walked or rode there to do it. He may sidestep or cover up tracks in the immediate vicinity of the offense, or the tracks may be burned over or obliterated by others. Farther out he will settle down to a normal gait. If no tracks are found at or near the origin, widen out. Begin this wider search at the most likely points, but until the tracks are found conduct the search on a rigid system, so that no area will be overlooked.

Identification of tracks.

In identifying tracks, the study of details is essential; dimensions and shape of imprint, nails (present and missing), seams, creases, cracks or other distinctive marks; wear, repair; age of track; methods of putting down the foot (twist as foot strikes the ground, etc.); angle of feet (toes out straight ahead, or in); and differences, if any, between the feet in this angle; barefoot, smooth, or rough-shod horse tracks; specially shaped or weighted shoes, and gait of animal (such as trot or pace).

Age of track.

The age of a track is shown by sharpness of impression, by moisture and color, whether leaves and dirt lumps have fallen into it, or tracks of insects, birds, etc., or other man-caused tracks, have yet crossed it, and by the condition of broken green twigs, etc. One of the best indications is the condition of manure dropped by an animal. A trail made at night is often known by the way it bumps into or makes detours around obstacles.

Other indications.

Approximate speed may be shown by the degree of slide at the heel, the depth of the heel edge and toe edge, the length of drag at the toe, and the distance between tracks. The class of person or animal can sometimes be deduced from tracks (high-heeled vaquero boots, new or pointed-toe city man's shoes, horseshoes, or mule shoes, etc.); also whether the individual was drunk or sober; carrying a burden or free (feet wider apart, steps shorter and more unsteady with burden); and the existence

of bodily defects (step is shorter on lame leg; injured knee or hip twists foot tracks, etc.). A confidential talk with the local shoemaker or blacksmith, if there is one, will often throw light on the ownership of shoes which make a peculiar track.

Following tracks.

Following tracks requires experience and skill. Points sometimes overlooked are the following: In dry pine needles breakage or minute differences in color are often discernible on hands and knees though the needles have sprung back to position and no trace is visible while one is standing. Tracks in dry grass also require extremely close attention; barring wind, grass will usually hold what impression is made until the coming of night dew, fog, or rain. Through brush a trail can be followed by broken or skinned twigs near the ground although no signs are visible on the ground itself. When the trail is broken or lost, circle ahead in the probable direction of the trail. Setting stakes by the tracks found will help to line up the course.

Comparing tracks.

To convince a jury we must absolutely identify tracks found with known tracks of the suspect. A track may be compared with a foot or shoe for identifying marks. In respect to dimensions it is better to compare tracks with moving tracks, since tracks made in soft earth, especially at high speed, are always shorter than the foot making them because of the push toward center at heel and toe. Keep in mind that as a general proposition a track is little more than a clue. Standing alone, the cast of a track of an accused man is not very convincing to a jury. There must be other evidence on which to secure a conviction.

For the purpose of comparing the tracks found with those of the suspect, or the horse or other animal of the suspect, induce him or the animal to traverse some soft surface in the vicinity of his home or out buildings where distinctive tracks are likely to result. This will give opportunity for comparison at the proper time. Examination or measurement should be made at the earliest possible date before obliteration or partial change in the track occurs.

Proficiency in tracking.

Whether the tracks are those of autos or men or animals, proficiency in intrepreting them can be gained only by actual practice and plenty of it. Trackers can not be made from books, but one tracker can often tell another new kinks, and we can all learn more by study of the work. Let every man keep his eyes open and report new things of which he learns, or describe clues familiar to him but not mentioned here.

Moreover, many who know can not tell how they know. The importance of this must not be overlooked. In court we shall surely be asked this question, and the opposing attorney will discredit our testimony if we can't tell. "You must not only know that you know, but also know how you know."

Record of tracks.

The original track, or a cast or replica of it, is the most convincing evidence in respect to it. The original foot-print may often be solidified sufficiently to be dug out and preserved by means of water glass. This is specially useful in sand or sandy soils. If the soil containing the print is firm enough not to be displaced by it, the water glass may be poured directly into the print. If the soil is not firm enough, dig a shallow trench, 2 inches wide and of the same depth, around the print and 2 inches distant from it, and flow the water glass into the trench until it has been soaked up by the soil and shows on the surface of the print. Then let it stand for a day. The print can not be pried out, but must be carefully freed by digging the soil away from around and and under it. It must also be handled with much care thereafter, and this reduces the value of the method when conditions, such as transportation, are not favorable to the required care.

In this and many other cases a more desirable method is to make a cast of the track with dental plaster of Paris. Plaster of Paris sets quickly. From the cast a replica of the track can then be made, or not, as desired. When the soil composing the print is firm enough, the dry plaster may be placed on a large spoon and the arm of the spoon tapped lightly and frequently to allow the dry plaster to drop very slowly into the imprint, until the plaster bed has a thickness of one-eighth to one-fourth inch. Then with the fingers sprinkle clear water very lightly into the dry plaster in the imprint. Pour in some more dry plaster and again sprinkle with water. Repeat this process until the plaster cast is at least 1 inch in thickness. Let the cast rest in the imprint for at least 30 minutes, then cut around it with a jackknife and excavate the dirt deep enough to be sure that the cast will not be injured in removal. Take the cast and attached dirt to a pool of water, or stream, or trough, and wash off the dirt. For two or three hours the cast should be handled carefully, until it has hardened sufficiently for transportation. If the imprint is shallow, a dam of earth should be built around it before the plaster of Paris is poured into it.

To make a replica of the original track from a cast, the upper surface of the cast should be as level as possible. The cast should be washed clean, and then greased, either with an oil which is fluid at air temperature, or, if thicker, heated until it is very fluid, so that no crevices or other marks may be filled up and thus be obliterated in the replica. The greasing is to prevent sticking. The cast is then laid top down in a suitable box or other flat-bottomed receptacle, and wet-mixed plaster or cement is flowed over it and reinforced, as in making a cast. The original cast or replica so made may be expected to be slightly too small to accommdate the boot or foot which made the track by the time it gets to court, and care should be taken not to allow a jury to be prejudiced by this fact.

If it is not feasible to secure the footprint itself or a cast of it, the best remaining method is to photograph the track. The camera lens must be exactly parallel to the surface photographed, to avoid distortion of the perspective. This may be done most conveniently by the aid of a clamp for attaching a camera to a board or other similar support at any required angle. For use in court the photograph may be enlarged to the exact size of the original. If in photographing, however, a rule is placed alongside the footprint, the scale of measurement will appear in the photograph itself, regardless of the size of the latter.

Restoring mutilated papers.

In piecing torn paper together, first hunt for corner pieces, then for edges, and afterward work up the interior. As the back of the paper may be important, it is advisable to paste the fragments on a transparent medium like tracing linen, or to lay them between clean glass plates which may be bound together. If the writing on the paper is not in copying ink or indelible pencil, the paper may be moistened by the spray from an atomizer or by the steam from a teakettle. This helps to straighten it out if it is badly curled or bent. Dim writing comes out plain in a photograph. Worn or fragile papers may be made indestructible for handling by dipping them in a solution of 1 part of stearine to 3 parts of collodion, and allowing them to dry 15 minutes.

Preserving perishable evidence.

Perishable evidence is often best preserved by placing it in cold storage. It may often be preserved in alcohol. In the absence of cold storage, formalin or formaldehyde is best for fish or game meat. These preservatives, however, destroy the natural color. If it is impossible to preserve any article of evidence, be sure to have witnesses to its finding and its nature or identity, while it is yet in its original condition.

Making use of experts.

To the layman one of the most striking services of the expert is that of the microscopist, who deals with a world invisible to the unaided eye.

He can tell, for example, whether a hair is from deer, cow, horse, dog, or human being and the race, habits, and probable age of an original human possessor; from carpet-sweeping dust the number, age, character, habits, food, and recent occupation of, as well as visitors recently entertained by, the occupants of the room from which it is taken; from finger-nail deposits the food, occupation, habits, and whereabouts of the person from whom they are taken for a week or so prior to that time; and he can often derive substantially the same information from a shred of clothing or even from knives or other articles much handled by an individual. He can identify deer or other game meat or blood and distinguish beyond question between them and beef, chicken, etc.

It should also be borne in mind that expert testimony, which is usually in the nature of opinion rather than fact, must be given by the expert responsible for it and not by proxy, and arrangements should be made in advance for the expert's attendance at court.

Getting a lead.

In deciding to whom to go for possible evidence, eliminate at once the busybodies, who always know all about it but generally know nothing worth much, and go after those who really know most or were first on the ground. Unless the act be incendiary or malicious, or done stealthily, the person to interview first is the one who committed the act, if this be practicable. No one knows more about the crime than the man who committed it, and the best results are generally obtained by getting in touch with him promptly. Under clever and prudent interrogation, the offender will almost invariably say something of value in the case. And he is likely to do this even when he is determined to suppress information relative to the offense. The same is true regarding those offenders who desire to suppress facts which might implicate them. Until the officer investigating a malicious or incendiary crime has sound reasons for suspecting a particular person, that person should not be interviewed relative to the offense. No person should be directly charged with an offense by a forest officer. It is much better to discuss the crime on general grounds with the suspect. In other words, "speak softly." Always remember that a confession obtained after a threat or promise of leniency is not admissible as evidence to prove the guilt of the accused.

Hints on interrogation.

Knowledge of men is essential; nothing else can make up for a lack of it in this work. A witness will tell nothing or make but inaccurate and unimportant statements to an investigating officer who lacks shrewdness and tact, while the very same witness will make precise, true, and important statements to an officer who can read him and knows how to handle him. In many instances a man's confidence is obtained by evincing an interest in his business or hobby.

Persons having no interest in the offense or the offender will generally tell the truth; the testimony of those who have such an interest should at least be taken with caution. However, it should not be overlooked that one of the latter class may be upright enough to tell the truth.

Truthful witnesses may be divided into those who are willing to tell what they know and those who are reluctant to do so. Most people are of the latter kind; the average American not only has an exaggerated unwillingness to "peach," even on a wrongdoer, but is himself so busy that he doesn't want to get mixed up in other peoples' troubles if he can avoid it.

Attitude of officer.

Much of the success to be gained depends upon the aptitude of the officer. Judge your man. Be firm and diplomatic with the bold, patient and considerate with the timid. Unnecessary officiousness or insolence will cause most men to refrain from discussing the crime further. After you have collected valuable information from any person you should test his source of information—that is, find out whether he has acquired the

knowledge by personal observation or through hearsay. This is very important, since many men unconsciously restate what they have heard as if they were the original discoverers of the information. Too much care can not be exercised in this regard.

Getting the story.

There are two considerations: (1) To get from the witness as complete a statement as possible. Be sure nothing essential is omitted, but don't let him ramble aimlessly. (2) To be sure he is telling the truth. Even a willing witness is not necessarily truthful.

Having a clear mental picture of the case thus far will show what further evidence is needed and prevent the omission of important items. The six watchwords of a complete case are again valuable reminders.

The method to be used depends much upon the witness. Unless he wanders beyond endurance, it is best to let him tell his story straight through in his own way. Then question him and rehash until you are sure that he can not or will not add anything more of value. Take sufficient time, no matter how hurried you feel. Better not "start something" in the first place than be in too much of a hurry to get the facts after you have started it.

Read to the witness what you have written, word for word; ask him if it is correct; change any items which he may desire corrected; have him sign it; and have his signature properly witnessed.

In case a witness refuses to make or to sign a written statement, but will talk, get him to talk in the presence of two or more reliable witnesses. Afterwards write down or have the other witnesses write down the essential parts of his statement as nearly verbatim as possible in such form that they will swear to it in court.

In addition to the record of what was said, put down in your notebook the circumstances of the conversation, persons, witnesses, time, and also all the conclusions for future guidance which you can draw from the facts thus learned.

Some men can not be induced to make a statement, but say that if they are put on the stand they will tell the truth. If their resolution not to talk can not be shaken, the only thing to do is to try to get indirectly as shrewd an idea as possible of what they can testify about.

Unintentional offenders.

The general methods indicated for the interrogation of witnesses apply to a great extent to the interrogation of unintentional offenders, such, for example, as those who thoughtlessly leave camp fires burning, especially if they are inexperienced and do not realize the danger. Courteous treatment and an evident purpose only to do one's duty, with regret for the inconvenience necessarily inflicted, are usually more effective than is treating them like common criminals, and will often induce confession and a readiness to "take their medicine" and not do it again.

Inaccuracy in statement.

When a man is willing to tell the truth, untrue statements may result from the following causes:

(*a*) *Poor observation.*—A man may see only part of a total action and have a very inadequate or mistaken notion of the whole; a man sometimes sees what he expects to see; people also often hear imperfectly or mistakenly.

(*b*) *Poor comprehension and reasoning.*—Inference is a part of every mental operation. When we see a clock face, we take for granted that there is a clock behind it, but there may not be; a tenderfoot thinks mountains are much nearer than they are because he infers the distance which the given appearance implies in low country; illiterate people distort long sentences and piecing them out by inference twist the meaning.

(*c*) *Poor memory.*—Many people have poor memories. Beware of people who remember everything; their testimony is usually open to suspicion. Memory can be helped by talking of the event in question,

often by discussing unimportant incidents or a man's occupation connected with the thing to be remembered. But give him time; don't hurry him. Do not press an emotional witness too far; there is real danger, especially with such a person, that by your forcible suggestion you make him remember what he never saw or knew.

(*d*) *Influence of other people's statements.*—Untrained persons who have seen or known part of an exciting incident unconsciously try to complete the matter by fitting what they have seen or known with details told by others. They may even end, without untruthful intent, by weaving the whole garbled mass of hearsay into their own story as what they saw and heard and know.

(*e*) *Strong feeling.*—Excitement and fear often lead one to exaggerate, but sometimes to overlook important details.

(*f*) *Temperament, age, occupation.*—A ranger looking at a bunch of cattle sees at a glance whether the range is overgrazed, or grazed in patches because of poor salting or water development; a city man sees cattle, but not the other factors, and couldn't be expected to give an intelligent statement on such matters.

(*g*) *Fear of consequences.*—Be sure to relieve a witness' mind of a possible impression that you want to implicate him, etc., if such inferences are without cause. Frightened people, imagining themselves suspected, always shuffle in testimony. This should be a danger signal, although the shuffling may not always be due to fear.

(*h*) *Poor questioning.*—Good questioning requires hard thinking. Be sure nothing is missed. Follow your own course and do not be led or pushed, either designedly or accidently, by the witness.

Increasing the accuracy of statement.

Much can be done by careful questioning and suggestion to clear up obscure statements or supply omissions. Check the witness' accuracy, for instance, as to height of people; ask him if the man he mentions is as tall as you are; check distances by asking about something in sight; verify his power of recognizing persons, estimating numbers, etc. It is sometimes necessary to verify statements oneself, independently of the witness.

The main case.

Arrange the material so that it tells the story in chronological order. Confine the main case to the material essential to a clear and complete chain of evidence. This has the advantage of giving the jury a clear impression; too great a mass of evidence may muddle the main issue in their minds. Any additional material should be carefully worked up with a view to use in rebuttal or in connection with surprise defenses.

Have your record perfectly clear as to exactly what part of the chain the testimony of each witness and each piece of documentary evidence will cover, and just what link each exhibit will support. Avoid repetition as far as possible.

Appendix.

A list of the witnesses, with brief notation of the exact facts to which each will testify, together with all documentary evidence and a list of exhibits, should be collected in an appendix, each separate item being designated by letter, as, for example, "Exhibit A." At the appropriate points in the narrative record these documents, etc., should then be referred to only by exhibit designation. This helps both in completeness and in keeping the narrative clear.

Use of maps in civil suits.

The trespass map must show completely the facts of trespass and damage suffered. It should include, therefore, land section, township, range, and boundaries and should cover species or type and size of timber and nature and extent of damage.

The court map.

The map to be presented in court should be on a scale large enough to be legible when hung up so that all the jury can see it at once, since it is much more effective when used in this way. It should be confined to the data essential for the purpose, but it should show this with the utmost clearness. Its legend should also give its approximate scale, and, if angles of view are material, a statement that these are correct. Every care should then be used to see that they are correct. Any "trespass" or other designation on the original, to which the defense could object as tending to prejudice the jury in advance, must be carefully omitted.

As to land boundaries, the proclamation diagrams of the national forests can always be found in the biennial volume of the United States Statutes at Large covering the year in which they were issued. Private land boundaries can be got from Forest Service status, and verified and certified by the United States Land Office if desired.

Report to district forester.

A report in accordance with a special form (see Criminal forms) must be made and forwarded to the district forester on each case prosecuted in a State court as soon as possible after the trial has ended. This is absolutely necessary in order that proper check may be made of the progress of law-enforcement work and in order that the assistant to the solicitor may be furnished with the data for his monthly report to the solicitor. Reports on cases to be prosecuted in the Federal courts must be submitted to the district forester before legal action is initiated. Should the prosecuting attorney of the county or the supervisor desire assistance in the handling of a criminal trespass in the State court, a special report of the circumstances should be sent immediately to the district forester.

Expenses of forest employees in criminal prosecutions.

Forest officers will be officially reimbursed for all necessary expenses incurred in accordance with the fiscal and administrative regulations of the Department of Agriculture in the transportation of a person arrested without warrant by a forest employee and for necessary subsistence of such person at hotel, etc., until he is delivered to the jurisdiction of a United States commissioner or to the jurisdiction of a police judge, probate judge, or justice of the peace. If an offender is brought before a United States commissioner or a State magistrate on a warrant, all expenses incurred after the issuance of the warrant (except the forest officer's salary and expenses) are chargeable to the Federal court through the commissioner or to the proper city or county through the police judge, probate judge, or justice of the peace, as the case may be. Subpœnas should be issued for Government witnesses so that their mileage and fees may be paid by the United States commissioner or by the local justice if the case be prosecuted in a State court. The Forest Service can not legally pay mileage or fees of offenders or witnesses already under the jurisdiction of Federal or State courts. Expenses, as well as the time of forest officers for other needed duties, may often be saved to the Forest Service by making use of sheriffs and constables and United States deputy marshals for the serving of warrants and subpœnas and for other such assistance. In particular, the hiring of men for posse needs or to accompany officers for identification of witnesses in State cases can appropriately be assumed by the counties, and its expenses should by the above means be transferred to them when it is feasible to do so. However, it sometimes happens that neither the Federal court nor the State court can pay the mileage or fees of a necessary Government witness because of legal restrictions. In a case of this kind local administration would justify the hiring by the Forest Service of the proposed witness as temporary laborer during the period necessary to attend the hearing and trial. Under these circumstances the temporary laborer would receive reimbursement for his transportation and other expenses incurred while attending the hearing and trial on Form 4 accompanied by subvoucher 4b. It is impossible to frame general instructions which will

fit every contingency. In case of any doubt specific advice should be sought before incurring the contemplated expense.

Search without search warrant.

Forest employees who, pursuant to the laws of Idaho and Montana, have been appointed or designated as deputy fish and game wardens, may *without a warrant* search certain places and articles for any species of game animals or fish or fur-bearing animals or game birds illegally obtained. No authority is conferred by law on any officer, whether Federal or State, to search a man's home or the outbuildings connected with his home without a search warrant.

Under the Montana law, deputy game wardens, sheriffs, deputy sheriffs, State forest officers, constables, and other peace officers are empowered to search *without warrant* for game animals, fish, fur-bearing animals, or game birds, or parts thereof, any camper's tent, boat, car, automobile, or other vehicle, box, locker, basket, creel, crate, game bag, or other package. With a search warrant any of these officers may search a residence or other building, or places, or articles, not defined above. The Montana law does not specifically authorize national forest employees to act as deputy game wardens. They must be appointed by the State fish and game warden before they can legally perform the duties of such wardens.

National forest supervisors, deputy supervisors, and rangers located in Idaho are specifically empowdered by statute to perform the duties of deputy game wardens. Other national forest employees in Idaho must be appointed by the State fish and game warden before they can legally act. In practice all forest officers in Idaho receive from the game bureau a commission as evidence of their right to enforce the game laws. Deputy game wardens and all other peace officers of Idaho may search *without warrant* depots, cars, warehouses, cold-storage rooms, warerooms, restaurants, hotels, lodging houses, markets, baggage, packages, tents, wagons, autos, vehicles, and camps, upon reasonable suspicion, for game animals, fish, birds, or fur-bearing animals captured in violation of law. Other places and personal effects may be searched for game animals, game fish, game birds, and fur-bearing animals under authority of a search warrant. A search warrant should be read to the owner or occupant of the place or thing to be searched. (See under the subtitle "Search warrants" the description of the powers conferred by search warrants.)

CRIMINAL PROCEDURE BEFORE UNITED STATES COMMISSIONERS

United States commissioners.

A United States commissioner is an officer of the United States district court in the district for which he is appointed. He exercises criminal jurisdiction within very narrow limits. He has no power to impose a penalty for any offense. Neither can he inflict punishment for contempt of his court. All he can do regarding contempt offenses is to report them to the proper United States district judge for disposition.

Powers and duties.

In criminal matters a United States commissioner is authorized by Federal law to issue warrants, upon proper complaint, for the arrest of offenders against the laws of the United States and cause them to furnish bail pending trial. He may cause any alleged offender to be imprisoned pending trial by the United States district court if the accused fails to furnish satisfactory bond for his appearance for trial.

Criminal complaints.

Unless a sufficient complaint under oath is filed with a United States commissioner and a showing of probable cause for holding the accused for trial be made, there is no legal authority for keeping the defendant under bail or in prison.

The laws of each State in Forest Service District 1 require a criminal complaint to be sworn to and to be based on the personal knowledge of the person making the charge. Therefore a criminal complaint filed by a forest employee or other person with a United States commissioner must be supported by oath, and the facts showing the crime and that in all probability it was committed by the accused must be within the personal knowledge of the deponent. A form of criminal complaint is given under the title "Criminal forms." A certified copy of the complaint should be attached to the warrant of arrest in order to inform the defendant of the substance of the charge against him.

The complaint must designate the specific offense committed and specify the statute and section violated, with such particulars of time, place, person, and property as will enable the defendant to understand clearly the character of the offense charged. Extreme care should be used in drawing the complaint, since not only the arrest but the case in court will be based upon it. In the wording of the complaint the language of the law invoked should be closely followed. Include only what you are sure you can prove. In a larceny case, for example, the exact items and numbers charged as stolen must be proved or the case will fail. Charge the easiest offense to prove, for instance, having game in possession out of season, rather than killing, unless evidence on the latter is ironclad.

Each offense, whether under the same or separate sections of the statute, should be made a separate count. If several men are taken for one offense, they should be charged jointly, since this saves the time and the expense of multiplication of cases.

Arrest of the accused; serving the warrant.

There are two ways by which a person known to have committed an offense against any Federal forest law may be brought before a United States commissioner for preliminary hearing.

(1) Any employee of the Forest Service may arrest any person found by such employee violating any law or regulation relating to the national forests.

After arrest the prisoner should be taken immediately before a United States commissioner, where a written or printed complaint under oath must be filed by the forest employee who made the arrest or by any other person who has personal knowledge that the prisoner committed the crime.

(2) The forest employee may first file a complaint under oath with the United States commissioner, who will issue a warrant for the arrest of the accused. This warrant may be directed to the forest employee for execution, or to the United States marshal or his deputy, provided the offense charged is a violation of any law or regulation applicable to national forests. If it be necessary to expedite the arrest, the forest employee may execute or serve the warrant.

If the offense charged be against some other Federal law, such as that governing the stealing or embezzling of personal property or money of the United States, a forest employee is without authority to execute the warrant, even though he is the complaining witness. The arrest must be made by a United States marshal or one of his deputies.

Whether the arrest be made by a forest employee or by an employee of the United States marshal's office, the complaining forest employee and the other Government witnesses in the case should appear at the preliminary hearing before the United States commissioner in order to prove to the commissioner that there is probable cause on which to require the prisoner to appear for trial in the United States district court.

Attendance of witnesses.

Just as soon as the forest employee files, or has caused to be filed, a formal criminal complaint with a United States commissioner, he should furnish the commissioner with the names and post-office addresses of the witnesses for the Government other than forest employees. Forest employees should appear voluntarily at the preliminary hearing, if necessary.

The commissioner will then issue a subpœna for each witness desired; the total number must not, however, exceed four. Only four witnesses can be legally subpœnaed at the expense of the United States to testify at a criminal preliminary hearing before a United States commissioner unless their subpœnas are specifically authorized by the United States district attorney.

Subpœna and service thereof.

A subpœna issued by a United States commissioner can not be served legally by a forest employee. This function is performed by the United States marshal or his deputy. Usually the delay incidental to the service of a subpœna by the United States marshal's office causes considerable inconvenience in getting action before the United States commissioner. Generally speaking, however, the Forest Service will have little difficulty in expediting preliminary hearings, since it is seldom necessary to have at the hearing other than forest employees to establish probable cause.

Arraignment of the accused.

Upon the arraignment of the accused before the United States commissioner the criminal complaint should be read and explained to the accused. He should be given reasonable opportunity to employ legal counsel, should he desire to do so, before any testimony is introduced. He may waive hearing and ask to have his case sent to the United States grand jury for consideration. In the latter case there is, of course, no need for the introduction of evidence.

Postponement of preliminary hearing.

It is within the power of a United States commissioner to postpone from day to day a preliminary hearing so long as he does not abuse the privilege.

Witnesses.

A witness in a criminal case may be required by the United States commissioner presiding at the preliminary hearing to give bond or recognizance for his appearance to testify in the United States district court at the trial of the accused. If the bond required is not furnished, the United States commissioner may commit the witness to prison until the date of the trial.

Witness fees.

In criminal proceedings before United States commissioners the witness fees prescribed by law are limited to $1.50 per day and 5 cents per mile for travel each way. A witness who appears voluntarily to testify is entitled to fees if he be one of the limited number allowed.

Search warrants.

United States commissioners are authorized by the act of June 15, 1917 (40 Stat. 228; U. S. Comp. Stat. sec. 10496¼a), to issue search warrants, upon a positive showing by affidavit covering the facts within the personal knowledge of the affiant, indicating the grounds for his belief that on the person or in the place or residence to be searched there is concealed property of the United States which has been stolen, or embezzled, or used as a means of committing a felony. In addition to the affidavit the complainant and any witness he may produce must submit to an examination by the United States commissioner as to the facts within their personal knowledge relative to the whereabouts of the property and the person or place to be searched. This statement must be reduced to writing and sworn and subscribed to by the complainant and any such witness. Great care must be taken to comply strictly with these provisions or the property obtained by virtue of the search warrant can not be used as evidence against the offender. The provisions of the State laws in district 1 are substantially similar to those outlined herein.

Hearing.

The presentation of a case to a United States commissioner is usually a very simple matter. In general the methods employed in a State justice's court are permissible. There is no jury to select, as frequently must be done in a justice's court. The commissioner is the judge of the facts submitted and from them determines whether or not there is probable cause for holding the accused for trial. All that the forest officer in charge of the case for the Government has to do is to present in logical order the facts or circumstances which he deems sufficient to convince the commissioner that the offender should be bound to appear for trial by the United States district court. If the case should be based on disputed points of law, or if it be too complicated for thorough presentation by the local forest officer, the services of the assistant to the solicitor or the law-enforcement officer should be requested through the district forester by letter, wire, or telephone.

Report.

If practicable a written statement of the facts of each case to be heard before a United States commissioner should be submitted to the district forester prior to the date of hearing. In any event a full trespass report (Outline 874–20) must be forwarded to the district forester immediately after the preliminary hearing, unless the accused be discharged from custody by the commissioner. The district forester should be informed of the reasons for the discharge of the accused and of the particular facts showing the insufficiency of the case of the Government.

Authority of State justice to perform functions of United States commissioner.

Under section 1014 of the United States Revised Statutes a State justice of the peace, probate judge, or other magistrate, or mayor of a city, may act as a committing officer, issue warrants of arrest on proper complaint for offenses against the laws of the United States, and hold a hearing to determine whether or not there is probable cause for requiring the accused to appear for trial in the United States district court. In fact, a State justice has authority to exercise all of the legal functions that any United States commissioner may perform at or in connection with a preliminary hearing under the Federal laws.

The State justice in a case conducted by him should use in a modified way the criminal forms adopted for practice before United States commissioners. A transcript of the entire proceedings, including copies of all writs issued and a statement showing the disposition made of the prisoner, should be submitted speedily by the justice to the clerk of the United States district court. The transcript should be accompanied by an itemized account of the fees due the justice for acting in the case. These fees, corresponding to the amount paid by the county for similar services, will be paid on the approval of the clerk or justice of the United States district court.

If the office of a United States commissioner be easily accessible to a complaining forest employee, a criminal case should not be set before a State justice. It is advisable to have the consent of the State justice to hold the hearing before him, before the offender is brought into his court. The reason for this is that the State justice may not want to hear the case or may feel that he is not authorized legally to hear and pass on the evidence, or it may be that the necessary forms are not readily available for his use. The forest employee should do everything reasonable to assist the justice in handling the case. A State magistrate in acting under the Federal law is not authorized to issue search warrants.

Criminal forms.

A limited number of specimen forms used by United States commissioners in criminal cases are incorporated in a later section.

Defendant.

The person charged with the commission of any crime against the United States is entitled to be represented by legal counsel at the preliminary hearing before the United States commissioner. It is his right to take every possible technical advantage of the situation to procure the quashing or dismissal of the complaint. He should be informed of his right to do so, and he must be given ample opportunity to secure counsel.

Information; indictment; trial.

After an accused person shall have been held or bound over by a United States commissioner for trial the next step in the criminal proceedings is the filing of an information by the United States district attorney or the finding of an indictment by a Federal grand jury. If the offense be a felony or other infamous crime, the Constitution of the United States requires that the accused must be indicted. Only in case of a misdemeanor (an offense not punishable by imprisonment exceeding one year or at hard labor) can an information be filed in the United States district court. After the filing of an information or the finding of an indictment the case will be set for trial. All this work is under the direction of the United States district attorney.

Writs of United States commissioners.

Warrants of arrest and other writs issued by United States commissioners or by State justices while exercising the functions of a commissioner do not run outside the judicial district for which the judicial officer is appointed. If it be desired to remove a person accused of crime to the judicial district within which the crime was committed and to the jurisdiction of the United States commissioner who issued the warrant, the said warrant or a certified copy of it or of the indictment or information must be sent to some United States commissioner in the district or State where the accused is located, with the request that another warrant be issued for the arrest of the offender. Upon a proper showing the warrant will issue, and the United States marshal or his deputy for the district in which the accused is found will execute the warrant. The prisoner is then entitled to a hearing before the United States commissioner who issued the second warrant for his arrest. If probable cause be found for holding the prisoner, the record of the proceedings will be sent to the judge of the United States court for the district where the offender has been apprehended.

The prisoner is entitled to notice of the proposal to remove him to the district of State where the alleged offense was committed and to a hearing before the judge requested to order the removal. At this hearing the prisoner may contest the right to remove him and introduce evidence to prove his innocence. Upon a satisfactory showing by the Government the judge will issue the warrant for the return of the accused to the State or district having jurisdiction to try the charges. As a rule removal proceedings are handled by the United States attorneys of the districts interested.

NOTE.—A United States judicial district may comprise a whole State or a part of a State.

Limitation on criminal action in Federal courts.

No indictment shall be found nor shall any presentment be made without the concurrence of at least 12 grand jurors. All crimes and offenses committed against the United States which are not infamous may be prosecuted either by indictment or by information filed by a district attorney. No person shall be prosecuted, tried, or punished for treason or other criminal offense, willful murder excepted, unless the indictment is found or the information is instituted within three years next after such treason or criminal offense is done or committed. (See United States Revised Statutes, secs. 1021, 1022, 1043, and 1044, as amended by act of April 13, 1876.) For fraud the limitation is 6 years.

CRIMINAL PROCEDURE IN JUSTICES' COURTS OF MONTANA

Justice of the peace.

A justice of the peace in Montana is vested by law with criminal jurisdiction of a limited character. He has authority to hear criminal charges in all cases of misdemeanor where the penalty is a fine of not more than $500 or imprisonment for not more than six months, or both. In this class of cases a justice may impose the penalty after the guilt of an accused person has been found in the legal way. Warrants of arrest, subpœnas, search warrants, and other writs necessary to enforce his authority may be issued by the justice. Under the law he is a magistrate. He may punish for contempt of his court.

Whenever the statutes provide that a certain function must be performed or exercised by a magistrate, a justice of the peace may do it. He may issue warrants for the arrest of persons charged with felonies and hold them for trial after preliminary hearing, although he has no power to try cases of felony.

In case of an offense against any Federal law he may act as a committing magistrate with all of the power conferred by law on a United States commissioner. For a discussion of the powers of a justice of the peace while acting as a committing magistrate under Federal law, refer to the article under "Criminal procedure before United States commissioners," entitled "Authority of State justice to perform functions of United States commissioner."

Felony.

Under Montana law a felony is a crime punishable with death or imprisonment in the State prison. All other crimes are misdeameanors. It is well to remember that a county jail is not a State prison.

A crime declared to be a felony by the Montana Legislature is punishable by imprisonment in the State prison for not more than five years unless the legislature specifically provides otherwise. As a general rule, the legislature provides the penalty in the enactment, but in many instances it only classifies the crime, permitting the court to impose punishment under the general penalty. The prosecution for a felony is begun by the filing of an information by the county or prosecuting attorney or by the finding of an indictment by a grand jury of the county.

Misdemeanor.

A misdemeanor is any crime not declared to be a felony by the Montana Legislature. The punishment for misdemeanor is a fine of not more than $500 or imprisonment in the county jail for not more than six months, or both, unless a different punishment is specifically provided by law. It frequently happens that the legislature defines the penalty for a crime but does not specifically state whether the crime is a felony or misdemeanor. In this kind of case refer to the definition of felony and of misdemeanor in order properly to classify the crime. The prosecution for a misdemeanor is generally commenced by the filing of a complaint under oath. Sometimes the prosecution is begun by an information or an indictment.

Territorial jurisdiction.

Under the statute each township should elect two justices of the peace. The boundaries of each township are defined by the county commissioners. A justice of the peace may hold court for the justice of the peace of any other township in the county, upon the request of the latter. Any misdemeanor committed within the county may be tried by any justice of the peace of the county. The practice is, however, to bring the offender before the nearest justice for preliminary hearing or trial. While a justice of the peace may not be legally authorized to punish for a felony, he has jurisdiction as a magistrate to issue a warrant for the arrest of a person charged with the commission of a felony committed within the county and to bind the accused for trial

Warrant of arrest.

A warrant of arrest or other writ issued by a justice of the peace *may be executed in any part of the State* by the sheriff, constable, marshal, or policeman of the county in which it was issued. A specimen warrant of arrest is shown under the subtitle "Criminal Forms." As a general proposition, a warrant of arrest or other writ of a justice of the peace must be directed for service to a sheriff, constable, marshal, or policeman. If the offense charged be against any of the forest-fire laws of the State, a duly qualified forest officer may also be directed to execute the warrant, because forest officers, under the State forest-fire law, are ex officio fire wardens. Should the crime be against any of the game laws of the State, the warrant may also be directed for service to a forest employee, provided he has been appointed a State deputy game warden. Should there be no duly elected and qualified constable for the justice township, the justice of the peace may depute a special constable to serve a summons, subpœna, warrant of arrest, or other writ necessary to enforce his legal authority.

Complaint.

All criminal actions in justice of the peace courts are begun by a complaint. This document must be under the oath of some person who from personal knowledge is familiar with the facts of the crime charged.

The Montana statute provides that the complaint must state:

(1) The name of the person accused, if known.

(2) The county in which the offense was committed.

(3) The general name of the offense.

(4) The person against whom, or against whose property the offense was committed.

(5) If the offense be against property, a general description of the property.

(6) Particulars as to time and place of the offense. It also provides that the crime may be defined in the words of the statute applicable in the case. The complaint must be subscribed and sworn to.

A specimen copy of a complaint may be found under the subtitle "Criminal forms."

Arrest without warrant.

A *national forest officer* located in Montana may arrest without warrant a person violating in his presence any of the forest-fire laws of the State.

Any *national forest officer or employee* who holds a commission as State deputy game warden may arrest without a warrant anyone violating in his presence any of the fish or game laws of the State.

If the offense committed be a felony, such as *maliciously setting* on fire any timberland, the arrest may be made upon reasonable suspicion by the forest officer or employee, provided he has the qualifications defined above.

As a private citizen a forest employee may make an arrest for a public offense committed in his presence or when a felony has in fact been committed and he has reasonable grounds for believing that the person arrested committed it. Should he make a mistake, however, he would be liable in civil damages to the party injured, whereas if he were operating by authority of a legal warrant he would not be so liable.

NOTE.—These powers are derived from the statutes of Montana and not by virtue of selection as national forest employees.

Arrest.

To make an arrest it is not necessary physically to seize the offender. If, upon the request of an officer, the accused subjects himself to the authority of the officer, the arrest is complete. However, if the accused will not submit, all force reasonably necessary to remove the prisoner to the presence of a justice of the peace for hearing may be used. Furthermore, the officer making the arrest may summon orally as many persons as he deems necessary to accomplish the arrest. An arrest for a

misdemeanor can not be legally made at night unless under the direction of the justice or magistrate indorsing the warrant. In case of felony the arrest may be made during the day or night. The offender must be advised of the intention to arrest him and of the authority of the officer, except when the criminal is found engaged in the commission of the crime. Forest officers acting under the authority of a warrant must show it to the accused. It is good practice to read it to the offender. All weapons found on the person arrested may be taken from him. They must be delivered to the magistrate or justice.

Limitation of criminal action.

In case of misdemeanor a complaint, information, or indictment must be filed within one year from the date of the offense, or the action is legally barred. If the crime be a felony, the information must be filed or indictment must be found within five years from the date of the offense or the criminal prosecution can not be legally commenced. There is no limitation on the commencement of legal proceedings to punish for murder or manslaughter. The above limitations do not apply if the offender has fled or removed from the State. They apply only to actual residents within the State. Upon return to the State where the offense was committed the offender may be prosecuted for the crime if his total residence in the State since the commission of the offense has not been more than the limitation period.

Rights of defendant.

A person formally accused of crime of any kind shall have the right:

(1) To appear and defend himself in person or by counsel.

(2) To demand the nature and cause of the action.

(3) To meet the witnesses face to face.

(4) To have process to compel the attendance of witnesses in his behalf whether they reside within or without the county in which he is to be tried.

(5) To have a speedy and impartial trial by a jury of the county in which the offense is alleged to have been committed.

(6) To have a change of venue upon a proper showing.

(7) Not to be prosecuted a second time for a public offense for which he was previously prosecuted and in respect to which he was convicted or acquitted.

(8) Not to be compelled to be a witness against himself.

(9) Not to be punished for a public offense except upon a legal conviction.

10. Unless upon a plea of guilty, not to be convicted of a felony unless the verdict of a jury of 12 qualified persons is accepted and recorded by the court.

(11) Not to be punished for a misdemeanor except upon a plea of guilty, unless a verdict of "guilty" is delivered to the court by a legal jury. The defendant may waive a jury and submit his case to the judgment of the court.

(12) To be taken before the magistrate who issued the warrant for his arrest or some other magistrate of the same county if the alleged crime be a felony. (NOTE.—This is for preliminary hearing only.)

(13) If the crime charged is a misdemeanor and the arrest is made in another county, to be taken, upon his request, before the nearest magistrate in order to be promptly bailed. If bail be not furnished forthwith, the officer must take his prisoner before the magistrate who issued the warrant. Should the latter be absent or unable to act, the prisoner must be taken before the nearest or most accessible magistrate in the same county.

(14) To be brought as promptly as possible before the magistrate for hearing.

(15) To have reasonable opportunity to secure the services of counsel.

(16) If the defendant is brought before a justice other than the one who issued the warrant of arrest, to have the *complaint* on which the warrant was issued in the possession of that justice.

(17) In general, to be taken by the officer making the arrest before the nearest magistrate of the county in which the offense is triable. The officer must deliver to the magistrate the complaint and warrant with his return indorsed on the warrant.

(18) If arrested without a warrant, to be promptly taken before the nearest magistrate and to have a formal complaint under oath filed against him immediately, so that he may know definitely the nature of the charge against him. He is also entitled to all the rights above specified.

(19) To be present in court before the trial can proceed.

(20) To be protected by the provision that except in certain specified cases a wife can not testify against her husband without his consent nor a husband against his wife without her consent.

(21) To appeal from a judgment of the justice's court and to have a trial anew in the district court.

Bail.

The prisoner at any time after his arrest and before his conviction may be admitted to bail by the justice's court.

Magistrates.

A magistrate is an officer having authority to issue a warrant of arrest. In Montana justices of the supreme court, judges of the district court, justices of the peace, and police justices are magistrates. The magistrate may examine any person who files with him a criminal complaint to determine the degree of personal knowledge of the crime possessed by the complainant.

Peace officers.

Sheriffs, deputy sheriffs, constables, marshals, and policemen are peace officers.

Jury.

In the court of a justice of the peace a legal jury is composed of six qualified persons. The defendant may agree to any number less than six persons, or the accused may waive his right to have a jury try his case and permit the court to hear and pass on the facts as well as the law of the case. The jury of a justice's court may be summoned orally by any sheriff, constable, marshal, or policeman of the county. If there be no duly qualified constable in the justice township, the justice is legally authorized to appoint a special constable to summon a jury.

The assent of two-thirds of the jury in a justice's court is all that is necessary for a verdict if the charge against the defendant be a misdemeanor. If the offense charged is a felony, the verdict of the jury in a district court finding the accused guilty must be based on unanimous consent.

If a jury be discharged without reaching a verdict, the defendant may be tried again. A jury may fix the punishment within the limitations provided by law. Should it fail to do so, the justice of the peace will fix it. An erroneous verdict may be modified by the court. Judicial, military, and civil officers of the State and of the United States are exempt from jury service. These officers must, however, respond if subpœnaed. Their claim for exemption should then be presented to the court.

Qualifications of jurors.

(1) A competent juror must be a male citizen of the United States over 21 years of age and not over 70.

(2) He must have been a resident of the State at least 1 year and of the county 90 days.

(3) He must be in possession of his natural faculties and of ordinary intelligence.

(4) He must have sufficient knowledge of the English language.

(5) He must have been assessed on the last assessment roll of the county on property belonging to him.

Information; indictment.

There is no substantial difference between an information and an indictment. Both are formal accusations of crime. The first is usually filed in the court by the county attorney, and the other is filed in the same place by a grand jury.

Grand jury.

In Montana a grand jury is composed of seven qualified men selected from the citizens of the county to inquire into any public offense committed in the county and to find an indictment of the offender.

Crimes committed near boundary.

If a crime is committed in Montana within 500 yards of the boundary coincident to two counties, either county has jurisdiction to try the offender and impose a penalty. If property obtained through larceny, burglary, or robbery be brought into a county from another county within Montana, either county has jurisdiction to try the criminal. A person who steals property in another State and brings it into Montana may be tried in any county into or through which the property has been brought.

Subpœna.

A subpœna is a process or a writ by which the attendance of a witness is required at a specified time and place to testify regarding the matter in hearing. The subpœna may require the witness to bring with him into court any book, document, or other thing under his control which he is bound by law to produce as evidence. Service of a subpœna is made by showing the original and *delivering a copy* to the witness personally. If the witness does not respond after legal service, he may be punished for contempt of court. A subpœna may be served by any person. Usually it is served by a sheriff, marshal, constable, policeman, or game or fire warden. If it is served by a forest employee, he should make his return on the back of the original and return it to the justice. Upon failure of a witness to appear at the time and place specified in the subpœna, the justice may issue a warrant for the arrest of the witness. The warrant must be directed to the sheriff of the county for execution. The magistrate before whom the complaint is filed or before whom the case is set for trial usually issues the subpœna to the witness. The county attorney may also issue subpœnas for witnesses to support a prosecution, or to attend a sitting of the grand jury, or to support an information or indictment, or to appear before the court in which the trial is held.

No person is obliged to attend as a witness before a court or magistrate out of the county in which the witness resides unless the judge of the court in which the offense is triable, or a justice of the supreme court, or a judge of the district court, shall indorse on the subpœna an order to attend. This indorsement is usually attached to the subpœna after a proper showing is made by affidavit of the county attorney, of the materiality of the witness. The defendant or his counsel may also require the attendance of witnesses in his favor through the same channel. Fees are not advanced; but if the witness is too poor to pay the expenses pending reimbursement, the court may order the clerk to advance the expenses of the witness. No fees are advanced to witnesses residing within the county.

A specimen copy of a subpœna is shown in the section entitled "Criminal forms."

Witnesses.

To be competent, a witness must be of sound mind. Generally speaking, the witness must be over 10 years of age. A defendant in a criminal case can not be compelled to be a witness against himself. He may however, testify on his own behalf if he so desires. When he appears on the stand, he is subject to examination like any other witness, and his testimony may be used for or against him, as the facts warrant. When

two or more persons are accused jointly of an offense, any one may testify against the other or others, but his testimony can not be used later against him in the criminal action. The method of compelling witnesses to attend criminal trials is treated under the subtitle "Subpœna." If a witness willfully disobeys any lawful order, process, or writ of a court or magistrate, he is liable to a fine of not more than $500 or to imprisonment for not more than six months, or both. In criminal cases the fees and expenses of witnesses living within the county need not be advanced. However, upon a showing of poverty the judge of the district court may draw a warrant on the county treasurer for the reasonable expenses of the witness. A witness at a hearing before a justice's court may be required to furnish an undertaking for his further appearance in the case. If he fails to furnish the security, he may be committed to jail until his deposition can be taken. For fees in a justice's court a witness is allowed for each day in attendance $1.50 and 10 cents for each mile traveled to and from the place of hearing or trial.

Plea.

Upon arraignment the accused may enter a plea of guilty, or he may offer a plea of not guilty and demand trial in the manner prescribed by law. If a plea of guilty be entered, the case need not be submitted to a jury. This plea is usually made orally. He may demur to the complaint or move to have it quashed.

Selection of jury.

A challenge to the entire panel may be offered by the defendant or the prosecution. The challenge must be founded on some irregularity in the drawing. In a trial in a justice's court the defendant is entitled to four peremptory challenges and the State to four. A peremptory challenge is an objection to a juror for which no reason need be given. There is no limit to the number of challenges for cause. The court in each case passes on the challenge for cause. Challenges for cause are made for conviction of felony, unsound mind, being prejudiced, relationship to the defendant, agency, close business relationship to the defendant, having served on the grand jury that brought in the indictment, having formed an opinion as to the guilt or innocence of the defendant, and other reasons.

Postponement.

Before the commencement of a criminal trial in any court either party to the proceedings may *upon good cause shown* have a reasonable postponement. The reasonableness of the request will be decided by the judge. Usually affidavits to support the request must be presented.

Prosecution of a corporation for crime.

A corporation may be prosecuted for a criminal offense just as well as a natural person. The mode of procedure in general is very similar to that employed when a natural person is brought to the bar of justice. A criminal complaint may be filed before a justice of the peace charging a corporation by its corporate title with the offense committed by it. The justice will then issue what is known as a summons (a copy is shown in the section entitled "Criminal forms"), which may be served in the same manner as a subpœna upon the president or other head of the corporation or upon the secretary, cashier, or managing agent.

Upon the day set for hearing, after proofs are submitted, the magistrate will certify upon the complaint that there is or is not probable cause for holding the corporation for trial in the district court. The magistrate will then send the complaint to the clerk of the district court, where the county attorney, on leave of the court, files an information against the corporation or has it indicted by a grand jury. Corporations are not punished for their crimes by justices' or police courts. The only function of the justice in this class of cases is to make a finding as to the probable guilt of the corporation and transmit it to the district court. The county attorney then handles the prosecution of the corporation. Before proceeding against a corporation it would be advisable for forest

officers to confer with the county or prosecuting attorney so as to reach a thorough understanding relative to the use of the evidence of guilt available and the method of procedure.

Trial.

After motions and demurrers are disposed of, the first step in a criminal trial is the selection of a jury to try the case. The submission of evidence in natural order takes place next. Usually the State presents its side of the case first and the defense second. Each witness, whether for the prosecution or defense, must give testimony based on personal knowledge of the crime or of some fact tending to connect the accused with the crime.

All witnesses are subject to cross-examination and impeachment. Careful examination may be made to test their prejudices, their opportunity to observe, their intelligence, and their ability to get a mental picture of the occurrences which they relate. Most of this is done on cross-examination. There is one exception to this rule, and that is in the case of witnesses known as "experts." Within certain restrictions an expert witness may declare his opinion of the effect of facts known or presumed to be true.

The accuracy of maps, charts, photographs, and other exhibits presented for use at the trial may be tested, and the qualifications of the makers inquired into very closely. This rule applies also to the authors of technical books. In fact, it applies to everything submitted for the examination of the court and jury. (See "Maps and photographs.")

In presenting a case it should always be remembered that the judge is the arbiter of the law and the jury the judge of the facts. It is very necessary to present a case in plain, understandable English since, as a rule, a jury is composed of ordinary men of rather limited education. The answers of forest employees acting as witnesses in a criminal case should be in the simplest language possible, brief and to the point. Evasive answers make a bad impression on the court and jury.

A jury in a criminal trial must sit together after hearing the charge until they have reached a verdict or their disagreement is approved by the court. Misconduct of a trial jury may be grounds for a new trial of the defendant, should it bring in a verdict of guilty. The jury may decide the case in the court room or retire for deliberation. The jury is sworn before it takes up the consideration of the evidence. The defendant must be present before the trial can be legally begun.

New trial in general.

A new trial may be granted on any of the following grounds: If the jury receives evidence for consideration outside of that submitted to the court; separation of the jury without leave of the court; misdirection of the jury by the court on any material point of law; when the verdict is contrary to the law and the evidence; discovery of new evidence not known to the defendant at time of trial and which could not have been discovered with reasonable diligence, etc.

Verdict.

The verdict of a jury must be delivered to the court publicly. If there are several defendants, the jury may render a verdict as to those on which they have agreed. If they disagree regarding the others the court should be informed. Those regarding whom no verdict is reached may be tried by another jury. The assent of only two-thirds of the number on the jury is required for a legal verdict in a justice's court.

Judgment.

If the accused be found guilty of a misdemeanor, the judgment of the court may be rendered in his absence. A judgment for felony in the district court must be delivered by the judge in the presence of the defendant. The judgment of a justice's or police court must be rendered not more than two days nor less than six hours after the verdict unless the defendant agrees to a different time.

Appeal.

A defendant in a justice's or police court case may appeal from the judgment at any time within 10 days to the district court, where a new trial of the charges in every respect will be held. The notice of appeal is given in open court at the time of rendition of judgment or by a written notice within five days thereafter. In order to secure a new trial in the district court, an undertaking to guarantee the fine and costs of the case must be filed in the justice's or police court. The defendant may be bailed pending his trial by the district court.

Police courts.

A police magistrate or justice is an officer having jurisdiction of misdemeanors and acts declared by ordinance to be offenses committed within cities or towns. His powers are like those of a justice of the peace.

Search warrants.

A search warrant is an order in writing issued by a magistrate to a sheriff, marshal, constable, policeman, or game or fire warden to search for personal property and bring it to the magistrate or justice.

This warrant is issued only upon a proper showing under oath that:

(1) The property sought was stolen or embezzled.

(2) The property sought was used in the commission of a felony.

(3) The property is in possession of any person who intends to use it as a means of committing a *public offense.*

(4) The property is in the possession of a person to whom the person intending to use it as a means of committing a public offense has delivered it.

(5) The property is desired as evidence of a violation of any of the game laws of the State.

A writ of this character is issued only on a finding of probable cause to believe that the property exists and that it is within one of the classes defined above. The justice or magistrate is obliged under the law to examine carefully and fully the person making application for the search warrant before he issues it. The deposition of the applicant for the search warrant must be reduced to writing by the magistrate, and it must be subscribed and sworn to by the applicant. If the statutory requirements are not strictly complied with, the property may be returned to the claimant for it, by the magistrate. The practice is to file a petition with the magistrate for its return and for its suppression as evidence. For further information on search warrants see the article entitled "Search warrants," under the heading "Criminal Prodecure Before United States Commissioners." In the execution of a search warrant the officer may break open any outer or inner door, or any window of a house, or any part of the house, if, after proper notice of his authority to the owner or occupant, he is refused admittance. Should the officer be locked into any room or part of the building while in the performance of his search, he may break open any part of the house to secure his liberation.

Unless the magistrate or justice specify on the search warrant that it may be executed in the nighttime, it must be executed in the daytime. A return on the search warrant must be made to the justice or magistrate within 10 days from the date of its issuance.

The officer executing the search warrant for his own protection should give an itemized receipt for the property taken to the person occupying the building from which it was removed. The law requires that this be done. If the building be unoccupied, the receipt may be tacked or posted on the inside of the building. But it would be better practice to deliver the receipt to the person in control of the building at the time the property was removed. A specimen copy of a search warrant is included under the subtitle "Criminal forms."

Affidavit.

An affidavit is a written declaration under oath, made without notice to the adverse party. It must be subscribed and sworn to by the affiant

or person making the statement. The oath must be administered by an officer empowered to administer oaths. An affidavit must be specifically required by law in order to hold the affiant criminally responsible for a false representation in it of the facts.

In trespass cases a national forest employee as such has no legal authority to administer oaths. Forest employees should, however, secure written statements signed by the person interviewed and sworn to before the forest employee seeking the statement. Such statements are not affidavits in the strictest sense of the word, but they are commonly accepted and considered as such by the public. They should be prepared in the form of an affidavit whenever possible on account of the impression made on the mind of the person making the statement. Furthermore, a statement of this character, though not admissible as evidence as a general rule, is an index to what the testimony of the affiant will be if he should be called or subpœnaed as a witness. Then, too, these statements are invaluable to the county attorney or law enforcement or prosecuting officer, since through them he obtains a definite idea of the testimony to expect from a witness at a trial. A form of affidavit is given under the title "Criminal forms"

Deposition.

A deposition is the written declaration under oath of a witness outside of the jurisdiction of the trial court or unable to attend the trial because of illness or for other excusable cause. The party seeking the deposition must inform the other party to the cause of the date set for the taking of the deposition, so that he may have opportunity to appear and cross-examine the witness.

Usually a deposition is in the form of question and answer. The court in which a case is being heard or is to be heard will issue a commission to some magistrate or officer empowered to administer oaths to take the deposition desired. Unlike the ordinary affidavit, a deposition when properly obtained becomes admissible evidence at the trial of an accused person.

The magistrate before whom the deposition is to be made may force the deponent to attend by the usual method applicable to other persons whose testimony is required. A defendant in a criminal case may have depositions taken in his behalf, whether the deponents are within or without the State. The prosecution is entitled to the same advantage.

Criminal responsibility.

No person is criminally responsible for the crime of another, unless he took some part directly or indirectly in the commission of the offense. In a criminal sense "indirectly" does not mean innocently. If there had been a conspiracy between two or more persons to commit some public offense, all would be responsible for the crime committed, even though some took no active part in accomplishing the crime. Conspiracy is an exception to the general rule.

For example, two men are traveling together through the forest, and both have been smoking cigarettes during travel across a specified area. It is known positively that no other person besides the two smokers passed over the route traversed within a certain hour. No lightning had existed in the region during the hour. A cigarette fire was discovered within the hour on the route traversed. The presumption here is strong that one of the smokers started the fire by a lighted match or a cigarette stub. On the theory that either one or the other must be guilty you can not hold both criminally responsible for the fire even though they admit that they were smoking while crossing the point where the fire occurred. You must prove which one is liable for the offense. Of course, if two or more persons are engaged in the commission of a public offense and, if, while attempting to consumate their criminal purpose, any one of them commits some crime other than that intended, all may be criminally responsible under certain circumstances.

To attach criminal responsibility to anyone, a suspicion, no matter how plausible or convincing, is not sufficient. Proof of the crime and

of the responsibility of the accused for it must be clear, positive, convincing, and beyond a reasonable doubt. For a definition of "reasonable doubt" see the article under the subtitle "Evidence."

County or prosecuting attorney.

The law has designated the county or prosecuting attorney as the officer to represent the State in criminal prosecutions. He is vested with large powers in this regard. In prosecutions for offenses against the fire and game laws of the State he is generally willing to accept the advice and help of forest employees if the unlawful acts were committed within the boundaries of any national forest or in the vicinity of one. In practice many cases are tried in a justice's court which are not prosecuted or handled by the county attorney. Furthermore, the county attorney is the legal adviser of justices of the peace in his county, and forest employees should feel free to ask his advice in matters relating to law enforcement.

CRIMINAL PROCEDURE IN JUSTICES' AND PROBATE COURTS OF IDAHO

The procedure provided by the Idaho law for the conduct of criminal prosecutions before justices' and probate courts of the State is substantially similar to that of Montana. There are, however, nine material differences which are scheduled under this title. In regard to other points forest employees will find in the Montana rules of procedure, outlined in the preceding section, guidance in handling cases in the justices' and probate courts of Idaho. A probate judge in Idaho has no greater jurisdiction in criminal matters than a justice of the peace. His criminal jurisdiction is exactly measured by the statutory rules applicable to justices' courts.

Probate court.

A probate court is one over which presides a judge elected by the people of the particular county. The office and court of a probate judge are usually located at the county seat. Under the law he is a magistrate upon whom is conferred limited criminal jurisdiction. He can impose a penalty for a misdemeanor if the punishment prescribed by law is a fine of not more than $300 or imprisonment in the county jail for not more than six months, or both. As a magistrate he is authorized to issue, upon a proper showing, warrants of arrest, search warrants, subpœnas, commitments, and all other writs necessary to enforce his jurisdiction.

Since a probate judge is a salaried officer of the county, it is the general practice to have tried before him all misdemeanors committed within the county over which he has jurisdiction. In this way the fees which a justice of the peace charges for his services are saved to the county. As a rule the prosecuting attorney requires that the trials of offenses of this character be held before the probate judge. Frequently, however, the prosecuting attorney will permit the hearing or trial of a criminal case before a justice in an isolated locality, especially when the cost of transporting the offender and witnesses to the county seat will exceed the fees paid to the local justice and the witnesses. Forest employees should not put the county to unnecessary expense in handling prosecutions for misdemeanors.

Justice of the peace.

In Idaho justices of the peace are elected from judicial units known as precincts. A precinct in Idaho corresponds to a judicial township in Montana. The justice must hold court in his precinct except when he is called into another precinct to act for another justice. He can impose punishment only when the penalty is a fine of not more than $300 or imprisonment for not more than six months in the county jail, or both.

Felony.

The punishment provided by the law of Idaho for the commission of any felony except those punishable by death is a fine of not more than $5,000 or imprisonment in the State prison for not more than five years, or both. This is the rule except where other punishment for a felony has been specifically provided by a statute of the State.

Misdemeanor.

Unless otherwise specifically provided by statute, the punishment in Idaho for a misdemeanor is a fine of not more than $300, or imprisonment for not more than six months in the county jail, or both.

NOTE.—Felonies and misdemeanors are classifications of crime. Neither one is the distinctive name of an offense.

Crimes committed on vessels or trains.

In Idaho the jurisdiction of an offense committed on a train or on board any vessel is in any county through which the train or vessel passed or in the county where the trip terminated.

Limitation on criminal action.

An indictment for felony, other than murder, must be found in Idaho within three years from the date of the offense. Otherwise the limitations are the same as in Montana.

Jury.

In a justice's or probate court in Idaho a legal jury is composed of 12 qualified persons. At the trial of a misdemeanor, however, the State and the defense may agree upon any number less than 12, or the parties may waive a trial by jury. The assent of five-sixths of the number serving on the jury is all that is required for a legal verdict in a justice's or probate court in Idaho.

Selection of jury.

At a criminal trial in a justice's or probate court in Idaho the defendant is entitled to four peremptory challenges to jurors and the State to three. Otherwise, the procedure is the same as in justice of the peace courts of Montana.

Witnesses.

The rule of procedure for compelling witnesses to attend criminal trials before justice's and probate courts in Idaho is very similar to that in Montana. There is an exception relative to fees. In Idaho a witness is allowed by law $2 for each day of legal attendance, and 25 cents per mile one way. There is also a difference as to the number that may be subpœnaed by the State or defendants. No more than three witnesses may be subpœnaed by either party at the expense of the county except upon the order of the judge. This order is usually based on the affidavit of the defendant or the prosecuting attorney showing that the testimony of the proposed witness is material and that he can not go to trial safely without it.

CRIMINAL PROCEDURE IN THE STATES OF WASHINGTON AND SOUTH DAKOTA

Since only a very small part of the national forest area of district 1 lies within the States of Washington and South Dakota, the criminal procedure in justices' courts of these States is not defined in this volume.

It may safely be said, however, that the criminal procedure is substantially the same as that in Montana. There are minor differences, of course; but on the whole it is believed that the rules elucidated in the Montana portion of this work will be ample as a guide for the employees of the Kaniksu and Custer National Forests who have to deal with criminal offenses committed within their respective administrative districts. In case of doubt ask the district forester or the local prosecuting attorney for instructions.

PART V.—CRIMINAL FORMS IN USE BY UNITED STATES COMMISSIONERS AND BY STATE, JUSTICES', AND PROBATE COURTS

Criminal Complaint

(Federal fire law form)

United States of America,
District of Montana, } ss:

Before me, Hugh Smith, a United States commissioner for the district of Montana, personally appeared this day James Corbett, who being first duly sworn, deposes and says: That in the State and district of Montana, on or about the 3d day of August, 1921, Thomas A. Lawson, in violation of section 52 of the Penal Code of the United States, and within the jurisdiction of this honorable court, did then and there willfully, unlawfully, and knowingly set on fire or caused to be set on fire timber, brush, and grass upon the public domain of the United States of America, within the Lolo National Forest, against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such cases made and provided.

James Corbett.
(Signature of affiant.)

Subscribed and sworn to before me this 5th day of August, 1921.

Hugh Smith,
United States Commissioner as aforesaid.

Criminal Complaint

(General Federal form)

United States of America,
____*District of*____ } ss:

_____Division

Before me, _____, a United States commissioner for the _____ district of _____, _____ division, personally appeared this day _____, who, being first duly sworn, deposes and says that on or about the _____ day of _____, A. D. 192__, at _____ in said district, _____

_____

in violation of_____

(Insert section number and date of statute)

did then and there unlawfully_____

_____

contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Deponent further says that he has reason to believe and does believe that_____

are material witnesses to the subject matter of the complaint.

_____
(Deponent's signature)

Subscribed and sworn to before me, this _____ day of _____, A. D. 19__.

[seal.]

_____
U. S. Commissioner as aforesaid.

Criminal Complaint

(Larceny of United States property form)

United States of America, }
____District of____ } *ss:*

Before me,_____, a United States commissioner for the_____ district of_____, _____division, personally appeared this day _____, who, being by me first duly sworn, deposes and says that _____, on or about the_____ day of _____, 192__, in the county of _____, in said district, and within the jurisdiction of this court, in violation of section 47 of the Penal Code of the United States, did then and there unlawfully and feloniously take, steal, and carry away from another, to wit, from _____, _____ then and there a forest officer at _____ County, in the State of _____, personal property belonging to the United States, which said personal property then and there consisted of _____, the said unlawful and felonious taking and carrying away being with the intent then and there to steal the said property and deprive the United States thereof, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

_____
(Affiant's signature)

Subscribed and sworn to before me this _____ day of _____, A. D. _____.

_____
United States Commissioner as aforesaid.

Criminal Complaint

(State specimen)

[This form, with slight modification, is applicable in the States of Montana, Idaho, and Washington. If used in Idaho, the word precinct should be inserted instead of township.]

In the justice court of Hellgate Township of the State of Montana in and for the county of Missoula, before Oscar Jensen, justice of the peace.

The State of Montana, plaintiff, }
v. } Complaint.
George W. Paine, defendant. }

State of Montana, }
County of Missoula, } *ss:*

Personally appeared before me this day John H. Clack, who, being first duly sworn according to law, complains and says:

That George W. Paine, accused by this complaint of the crime of leaving unquenched a camp fire committed as follows: The said George W. Paine did on or about the 28th day of July, A. D. 1922, at the county of Missoula, in the State of Montana, set out a camp fire and did then and there unlawfully, willfully, and maliciously leave the same unquenched, all of which is contrary to the form, force, and effect of the statute in such case made and provided and against the peace and dignity of the State of Montana.

Said complainant therefore prays that a warrant may be issued for the arrest of the said George W. Paine and that he may be dealt with according to law.

John H. Clack.
(Affiant)

Subscribed and sworn to before me this 3d day of August, A. D. 1922.

Oscar Jenson,
Justice of the Peace of Hellgate Township,
Missoula County, Mont.

Warrant of Arrest

(Federal form)

The President of the United States of America, to the Marshal of the United States for the_____ District of_____, and to his deputies, or any or either of them: [1]

Whereas, _____ has made complaint in writing under oath before me, the undersigned, a United States commissioner for the _____ district of _____, _____ division, charging that_____late of_____county, in the State of _____ did, on or about the _____ day of _____, A. D. 19____, in said district, in violation of_____
(Insert section number and date of statute)
statute in such cases made and provided, and against the peace and unlawfully contrary to the form of the dignity of the United States of America.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said_____ wherever found in your district, _____and bring his body forthwith before me or any other commissioner having jurisdiction of said matter, to answer the said complaint, that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal this_____day of_____A. D. 19____.

[SEAL.] _____
U. S. Commissioner as aforesaid.

Return of Warrant of Arrest

(Federal form)

Received this warrant on the _____ day of _____, 19____, at _____, and executed the same by arresting the within named_____at _____, on the _____ day of _____, 19____, and have_h____bod_____ now in court, as within I am commanded.

_____
United States Marshal,
_____District of_____

Per_____,
Deputy.

_____day of_____, 19____.

NOTE.—If the warrant of arrest be executed by a national forest employee, the return should be made under the name and title of the employee instead of under the name of the United States marshal.

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[1] If the crime be against any of the laws or regulations applicable to the national forests, the words "or any national forest employee" may be inserted in the warrant after the word "them."

Warrant of Arrest

(Idaho form)

In the justice court of Roughneck, precinct of the State of Idaho, County of ------;

The State of Idaho to any sheriff, constable, marshal, or policeman in this State:

Complaint, upon oath, having been this day made before me, Daniel O'Leary (justice of the peace or probate judge, as the case may be), by C. D., that the offense of ------ (designating it generally) has been committed, and accusing E. F. thereof; you are there commanded forthwith to arrest the above-named E. F. and bring him before me forthwith at ------ (naming place), or, in case of my absence or inability to act, before the nearest and most accessible magistrate in and for the said county.

Witness my hand at ------ this ------ day of ------ A. D. 192---- (and if in probate court, seal of court).

Daniel O'Leary,
Justice of the Peace, Roughneck Precinct,
Clearwater County, Idaho.

Note.—If the offense be against any of the game laws of the State, the words "game warden" may be inserted after the word "policeman." If the offense be against the fire laws of the State, the words "fire warden" may be inserted after the word "policeman."

Warrant of Arrest

(Montana form)

In the justice court at Hellgate Township of the State of Montana, County of Missoula:

The State of Montana to any sheriff, constable, marshal, or policeman in this State:

Complaint upon oath having been this day made before me, Hiram Crabb (justice of the peace or police judge, as the case may be), by C. D., that the offense of ------ (designating it generally) has been committed and accusing E. F. thereof, you are hereby commanded forthwith to arrest the above-named E. F. and bring him before me forthwith, at ------ (naming the place) or, in case of my absence or inability to act, before the nearest and most accessible magistrate in and for the said county.

Witness my hand and seal at ------ this ------ day of ------, A. D. ----.

Hiram Crabb,
Justice of the Peace,
Hellgate Township, Missoula County.

Note.—If the offense be against any of the game laws of the State, the words "game warden" may be inserted after the word "policeman." The words "fire warden" may be inserted after the word "policeman" if the crime be against any of the forest-fire laws of the State.

Return of Warrant of Arrest

(State form)

The return of a warrant of arrest issued by a State magistrate or justice should be substantially in the same form as that given herein for a warrant issued by a United States commissioner. The indorsement or return of the officer who executed the warrant should be on the back of the original delivered to the magistrate or attached to it.

Search Warrant

(Federal form)

United States of America,
____ *District of*_____ } *ss:*

To the marshal of the United States for the _____ District of ____ and his deputies, or to any of them, and to any United States Forest officer:

Whereas complaint by written affidavit and by deposition duly sworn to has this day been made before me,_____, a United States commissioner in and for the said district, by _____, alleging that he has good reason to believe, and does verily believe, that, within a certain _____, being the premises of _____, and being situated in the city of _____, in the county of _____, and State of _____, and within the district aforesaid, there are held and concealed unlawfully, _____ and which are possessed contrary to the form of the statute in such case made and provided.

The said _____ has set out in his affidavit and deposition the following particular facts upon which his belief that the said property is unlawfully concealed in the aforesaid premises is founded, to wit: _____

You are therefore hereby commanded, in the name of the President of the United States, to enter said premises in the daytime with the necessary and proper assistance, and there diligently to search for any such _____ and to seize and secure the same, if any such be found, and to hold and dispose of the same, subject to the order of the District Court of the United States for the _____ District of _____, and what you shall have done in the premises, do you then and there make return thereof, together with this writ and a written inventory of the property seized by virtue of the warrant, which inventory shall be subscribed and sworn to by you. You are also hereby commanded to make your return on this writ within 10 days from and after this date.

Given under my hand and seal on this _____ day of _____ 19____

[SEAL.]

_____
United States Commissioner for
_____ District of _____

Affidavit for Search Warrant

(Federal form)

United States of America,
____ *District of* _____ } *ss:*

Be it remembered, that on this _____ day of _____, 19 ____, before me, _____, a United States commissioner for the _____ District of _____ came _____, who being by me duly sworn, deposes and says that he has good reason to believe, and does verily believe, that within a certain _____ being the premises of _____, and being situated in the city of _____ in county of _____, and State of _____, and within the district above named, there are held and concealed unlawfully,_____ and which are possessed contrary to the form of the statute in such case made and provided. That the particular grounds for his belief are:

_____
(*Signature of affiant.*)

_____
United States Commissioner for the
_____ District of _____

Search Warrant

(State form)

In the justice of Hellgate Township (or precinct) for the State of ------ County of ------:

The State of ------ to any sheriff, constable, marshal, or policeman in the county of ------ Proof by affidavit having this day been made before me by Henry Standish, who has good reason to believe, and does believe, that there are held and concealed unlawfully certain property described as follows: ----------
(which was stolen, or which was held with intent to use it in committing a public offense, or which is evidence of violation of the game laws of the State, as the case may be) in the premises described as the dwelling house situate on the ranch of John Smith, and occupied by the said John Smith, in section 35, T. 49 N., R. 3 E., within the county of ------ State of ------ The said ------ has set out in his affidavit and deposition the following facts upon which his belief is founded, that the property described herein is concealed and withheld unlawfully, to wit: ----------
---

You are therefore commanded, to make immediate search in the daytime of the premises above described for the property defined by this warrant, and if you find the same or any part thereof to bring it before me forthwith, together with your return on this warrant, and an inventory of all property seized by authority of this warrant, subscribed and sworn to by you.

Given under may hand, and dated this ------ day of ------ 192 ----

PHILIP COHEN,
Justice of the Peace.

NOTE.—If the offense be against the game laws of either Montana or Idaho, the words "game warden" may be inserted in a search warrant after the word "policeman."

Affidavit for Search Warrant

(State form)

COUNTY OF MISSOULA, } ss:
State of Montana, }

Thomas Spencer, being duly sworn, deposes and says: That he has good reason to believe, and does believe, that within a certain dwelling house, the premises of (or occupied by) Ezra Breckenridge, and situate on section 4, T. 13 N., R. 24 W., M. M. county of Missoula, State of Montana, there are held and concealed unlawfully the bodies of two deer or parts thereof, which were killed in violation of the laws of Montana and which are possessed contrary to the form of the statute in such case made and provided. That the facts upon which his belief is founded are as follows: ----------
---

THOMAS SPENCER.

Subscribed and sworn to before me this ------ day of ------, 192----

JOSEPH DESCHAMPS,
Justice of the Peace for Hellgate Township, Missoula County, Montana.

SUBPŒNA

(Federal form)

UNITED STATES OF AMERICA, ---- *District* ----, } *ss:*

------ Division

The President of the United States of America, to the marshal of the ------ district of ------, greeting:

You are hereby commanded to summon ------ if ------ be found in your district, to be and appear before me, ------, a United States commissioner for the district of ------, ------ division aforesaid, at my office, ------, on the ------ day of ------, 19----, at ------ o'clock -- m., to give testimony, and the truth to say, in a cause pending before me, wherein the United States is complainant and ------ defendant.

In behalf of ----------

Hereof fail not, under the penalty of the law, and have you then and there this writ.

Given under my hand and seal, this ------ day of ------ A. D. ----

[SEAL.]

U. S. Commissioner as aforesaid.

NOTE.—A United States marshal or his deputy is the only person authorized by Federal law to serve a subpœna.

SUBPŒNA

(State form)

In the justice court of Hellgate township (or precinct) of the State of ------

The State of ------ to Richard Buckhouse:

You are commanded to appear before Isaac Hodgins, a justice of the peace of Hellgate township (or precinct), in Missoula County, on July 24, 1925, at 10.30 a. m., at the office of the said justice in the city of Missoula, as a witness in a criminal action prosecuted by the State of Montana against Abram Bornstien.

Given under my hand this 14th day of July, 1925.

ISAAC HODGINS,
Justice of the Peace,
Hellgate Township, Missoula County, Mont.

NOTE.—A similar subpœna may be issued by the county or prosecuting attorney when he is investigating a criminal offense committed in his county.

SUMMONS TO CORPORATION

(State form)

COUNTY OF------, *State of ------,* } *ss:*

To the Northern Pacific Railway Co., a corporation.

You are hereby summoned to appear before me, at my office in Missoula, Mont., on July 28, 1921, at 9.30 a. m., to answer a charge made against you on the complaint of Duncan O'Reilly for setting on fire and burning slashings within the county of Missoula, State of Montana, without first having obtained permission in writing to burn the said slashings, from a forester, or from a forest ranger, or from a fire warden, of the State of Montana.

Dated at the city of Missoula, State of Montana, this 29th day of July, 1921.

ADOLPH SCHAUER,
Justice of the Peace,
Hellgate Township, Missoula County, Mont.

RETURN AND CERTIFICATE OF SERVICE OF SUMMONS ON A CORPORATION

(State form)

STATE OF IDAHO, }
County of Bonner, } *ss.*

I hereby certify that I received the annexed summons on the 4th day of August, 1921, and personally served the same, together with a copy of the complaint in said action, on the defendant corporation named in said summons, by delivering to and leaving with Amos Switzer, the president of the said corporation, personally, on the 5th day of August, 1921, in the said county of Bonner, State of Idaho, a copy of said summons and a copy of said complaint.

Dated this 6th day of August, 1921.

PATRICK HENRY,
Sheriff of Bonner County, Idaho.

NOTE.—Any competent person over 18 years of age may serve a summons. If served by a person other than an officer, such as a sheriff, constable, etc., the return or certificate of service should be in the form of an affidavit of the person who made the service. The substance of the affidavit should be similar to the return above outlined.

RETURN AND CERTIFICATE OF SERVICE OF SUBPŒNA IN A CRIMINAL ACTION

(State form)

STATE OF IDAHO, }
County of Kootenai, } *ss.*

I hereby certify that I served the within subpœna on the 9th day of August, 1921, on Roger McParland, being the witness named in said subpœna, at Kootenai County, by showing the original to the said witness personally and informing him of the contents thereof.

Dated August 10, 1921.

BRIAN MCMAHON,
Sheriff of Kootenai County, Idaho.

NOTE.—Any competent person over 18 years of age may legally serve a subpœna issued by a State magistrate. Should it be served by a private citizen, his return should be in the form of an affidavit similar in substance to the certificate above outlined.

COMMITMENT OF DEFENDANT

(Federal form)

UNITED STATES OF AMERICA, }
---- District of ---- } *ss:*

------ Division

The President of the United States of America, to the marshal of the ------ district of ------, ------ and to the keeper of the jail of ------, in the State of ------ (or of any other jail within the ------ district of ------, to whom these presents may come), greeting:

Whereas, ------, ha-- been arrested upon the oath of ---- for having, on or about the ------ day of ------, 19----, in said district, in violation of section ------ of the Revised Statutes of the United States, unlawfully

---

And, after an examination being this day had by me, it appearing to me that said offense had been committed and probable cause being shown to believe said ------ committed said offense as charged, I have directed that said ------ be held to bail in the sum of ------ dollars, to

appear at the first day of the next term of the district court of the United States for the _____ district of _____ division, at _____, and from time to time thereafter to which the case may be continued and he having failed to give the required bail;

Now these are therefore, in the name and by the authority aforesaid, to command you, the said marshal, to commit the said _____ to the custody of the keeper of said jail of _____ (or of any other county in the district above named to whom this commitment may be presented) and to leave with said jailer a certified copy of this writ; and to command you, the keeper of jail of said county, to receive the said _____, prisoner of the United States of America, into your custody, in said jail, and _____ safely to keep until _____ be discharged by due course of law.

In witness whereof, I have hereunto set my hand and seal at my office in said district, this _____ day of _____, A. D. 19____.

_____
U. S. Commissioner,
_____ *District of* _____, _____ *Division.*

COMMITMENT OF WITNESS

(Federal form)

UNITED STATES OF AMERICA, } *ss.*
____ *District of* ____ }

The President of the United States of America, to the marshal of the _____ district of _____ and to the keeper of the jail of _____ county in the State of _____, or of any other jail within the _____ district of _____, to whom these presents may come, greeting:

Whereas, _____, has been arrested upon the oath of _____, for having, on or about the _____ day of _____, 192____, in said district, in violation of section _____ of the Revised Statutes of the United States, unlawfully

---

And, after an examination being this day had by me, and it appearing to me that said offense has been committed, and probable cause being shown to believe said _____ committed said offense as charged, and I having directed that the said _____ be held for the grand jury of the United States for said district, and

Whereas, it appears that _____ and _____, are material and necessary witnesses on behalf of the United States in relation to the said charge, and the judge of this court having directed that the said witnesses, in default of their furnishing a recognizance for their appearance before the said grand jury, be committed by the undersigned, and

Whereas, I have directed that the said witnesses be recognized in the sum of _____ dollars each, to appear at the first day of the next term of the district court of the United States for the _____ district of _____, at _____, on the _____ day of _____, 192 ____, and from time to time thereafter to which the case may be continued, and they having failed to give the required recognizance;

Now, these are therefore, in the name and by the authority aforesaid, to command you, the said marshal, to commit the said _____ and _____ as detained witnesses, to the keeper of the jail of _____ county, or of any other county in the district above named to whom this commitment may be from time to time presented, and to leave with said jailer certified copy of this writ; and to command you, the said keeper of said jail in said county, to receive the said _____ and _____, detained witnesses of the United States of America into your custody, in said jail, and them there safely keep until they be discharged by due course of law.

In witness whereof, I have hereunto set my hand and seal at my office in said district, this _____ day of _____, A. D. 19____

_____
U. S. Commissioner,
_____ *District of* _____

COMMITMENT OF DEFENDANT

(State form)

COUNTY OF BOUNDARY, } ss:
State of Montana, }

The State of Idaho to the Sheriff of the County of Boundary:

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense and giving as nearly as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this 12th day of July, 1921.

JAMES MONROE,
Justice of the Peace of Bonner's Ferry Precinct,
Boundary County, Idaho.

BAIL BOND OR RECOGNIZANCE

UNITED STATES OF AMERICA, } ss.
_____ *District of* _____ }

_____ Division

BE IT REMEMBERED, That on this _____ day of _____, A. D. 19____, before me, _____, a United States commissioner for the said _____ district of _____, _____ division, personally came _____, principal, and _____ sureties, and jointly and severally acknowledged themselves to owe the United States of America the sum of _____ dollars, to be levied on their goods and chattels, land and tenements, if default be made in the condition following, to wit:

THE CONDITION of this recognizance is such, that if the said _____, principal, shall personally appear before the district court of the United States in and for the _____ district of _____, on the _____ day of the _____ term, 19____, to be begun and held at the city of _____, _____, at _____ o'clock __ M. and from timeto time thereafter to which the case may be continued and then and there answer the charge of having, on or about the _____ day of _____, A. D. 19____, within said district, in violation of section _____ of the Revised Statutes of the United States, unlawfully _____ and then and there abide the judgment of the said court, and not depart without leave thereof, then this recognizance to be void, otherwise to remain in full force and virtue.

_____ [SEAL.]
_____ [SEAL.]
_____ [SEAL.]
_____ [SEAL.]

Taken and acknowledged before me on the day and year first above written.

_____
U. S. Commissioner as aforesaid.

[SEAL.]

NOTE.—For specimen bond or undertaking required by the State law, see the code of the State in which the offense was committed.

AFFIDAVIT OF SURETY

UNITED STATES OF AMERICA,
_____ *District of* _____ } *ss.*:

_____ Division

_____, a surety on the annexed recognizance, being duly sworn, deposes and says that he resides at _____, in the _____ of _____ in said district, that he is a freeholder in the _____ of _____, that he is worth double the sum of _____ dollars, over and above all his just debts and liabilities, in property subject to execution and sale, and that his property consists of _____
_____

_____.
(*Affiant's signature*)

Sworn to and subscribed before me, this _____ day of _____ A. D. 19____
[SEAL.]

_____,
U. S. Commissioner as aforesaid.

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